APPENDIX A

Reporter of Decisions
Decision No. 6654
Law Docket No. Cum-93-45

MAINE SUPREME JUDICIAL COURT

TRI-STATE RUBBISH, INC.

v.

TOWN OF GRAY

and

REGIONAL WASTE SYSTEMS, INC.

Argued September 9, 1993
Decided October 15, 1993

Before WATHEN, C.J., and ROBERTS, GLASSMAN, CLIFFORD, COLLINS, RUDMAN and DANA, JJ.

RUDMAN, J.

Tri-State Rubbish, Inc. ("Tri-State"), and Recyclables Unlimited Services, Inc. ("RUSI"), appeal from the adverse summary judgments entered in the Superior Court (Cumberland County, *Lipez, J.*) on their claims for declaratory judgment and injunctive relief. The trial court rejected contentions by Tri-State and RUSI that the Town of Gray's Solid Waste, Flow Control and Recycling Ordi-

nance violates the Commerce Clause of the U.S. Constitution [1], denies Tri-State and RUSI equal protection of the laws, and violates state and federal antitrust laws. Although the equal protection and antitrust challenges are without merit, genuine issues of material fact remain whether the Ordinance violates the Commerce Clause. We therefore vacate the judgments of the Superior Court.

Effective April 3, 1992, the Town of Gray ("Gray") adopted a Solid Waste, Flow Control and Recycling Ordinance ("Ordinance") which requires that all solid waste generated in the Town of Gray be disposed of at the Portland facility of Regional Waste Systems, Inc. ("RWS"). The avowed purpose of the Ordinance was to regulate solid waste collection and disposal, encourage recycling, and provide property owners with disposal facilities at a reasonable cost. The Ordinance was authorized by state law, 38 M.R.S.A. § 1304-B(2) (1989 & Supp. 1993)[2], and complied with the Waste Handling Agreement between Gray and RWS.

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[1] "The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with Indian Tribes." U.S. Const. Art. I, § 8, cl. 3.

[2] Flow Control. Subject to the provisions of Chapter 24 [MAINE WASTE MANAGEMENT AGENCY 38 M.R.S.A. § 2101 (Supp. 1993)] municipalities are expressly authorized to enact ordinances that control solid waste collection, its transportation or its delivery to a specific facility, when the purpose and effect of such an ordinance is to gain management control over said waste and enable the reclamation of resources, including energy, from these wastes. This authorization includes, but is not limited to, ordinances:

A. Requiring segregation of wastes;

B. Requiring delivery of wastes generated within the municipality, or any portion of those wastes, to a designated disposal or reclamation facility;

C. Designating certain materials as recyclable and exempt from the provisions of paragraph B; and

D. Designating yard wastes as compost material and requiring delivery of these wastes to a designated composting facility.

RWS operates a waste-to-energy plant located in Portland. Twenty-one member municipalities, including Gray, pledged their full faith and credit to repay the bonds that financed construction of the plant should RWS default on its obligation to repay. In an effort to insure that RWS remain financially viable, all member municipalities passed ordinances similar to Gray's, guaranteeing that all "acceptable waste" [3] generated within each municipality would be funneled to RWS for incineration.

Tri-State, a Maine corporaiton, has engaged in the business of commercial and residential trash collection in the Town of Gray for almost twenty years. In the past, Tri-State has generally disposed of the waste it collects at either the facilities of Maine Energy Resources Corporation ("MERC") in Biddeford, or Mid-Maine Waste Action Corporation ("MMWAC") in Auburn. MERC and MMWAC would incinerate the waste to generate energy, that would then be sold in interstate commerce. RUSI, a Maine corporation, recycles glass, paper, and corrugated board and sells the materials in interstate commerce.

Disposal facilities generally charge a "tipping fee" for accepting waste. The Gray Ordinance, however, allows a private waste generator to deposit its trash at the Gray transfer station without payment of a tipping fee. Commercial waste haulers, on the other hand, must transport their waste to RWS for incineration. If a waste generator segregates its waste in to recyclable/non-recyclable components, and then hires a commercial hauler to remove the waste, the hauler must take the recyclable components to the Gray transfer station and the non-recyclable components to RWS.

Tri-State objects to the Ordinance because of the increased tipping fees that the law imposes on commercial

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[3] According to the Ordinance, acceptable waste includes "[o]rdinary household, municipal, institutional, commercial and industrial solid waste," and excludes hazardous waste.

haulers.[4] RUSI objects to the Ordinance because it cuts off the flow of recyclable waste that RUSI processes in its business.

Tri-State and RUSI contend that the Ordinance violates their right to equal protection of the laws, because it discriminates against commercial enterprises. This contention is meritless. *City of Auburn v. Tri-State Rubbish, Inc.*, No. 6625, slip op. at 10 (Me. Aug. 5, 1993). Similarly, Tri-State and RUSI's claim that the arrangement violates antitrust laws is unsupportable. We recently ruled that state action immunity to federal antitrust laws applies to this type of arrangement. *Id.* at 8. *See also Tri-State Rubbish, Inc. v. Waste Management Inc.*, 803 F. Supp. 451 (D. Me. 1992), *aff'd in pertinent part*, No. 92-2218 (1st Cir. July 19, 1993). The flow control ordinance enabling act, 38 M.R.S.A. §1304-B(2), authorizes Gray's arrangement with RWS and therefore precludes any violation of state antitrust laws. *See Beaulieu v. City of Lewiston*, 440 A.2d 334, 345 (Me. 1992) (specific legislation controls general).

The Commerce Clause violation asserted by Tri-State and RUSI, however, presents genuine issues of material fact. Although the waste at issue is generated in-state and largely disposed of in-state, it is an object of interstate commerce. *Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dep't of Natural Resources*, 112 S. Ct. 2019, 2023 (1992). The aggregate effect of ordinances similar to Gray's could have a substantial impact on interstate commerce. *See Garcia v. San Antonio Metropolitan Transit Auth.*, 469 U.S. 528, 537 (1985); *Hodel v. Virginia Surface Mining and Reclamation Ass'n. Inc.*, 452 U.S. 264, 277 (1981).

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[4] RWS charged (as of July 1, 1992) forty-three dollars per ton for municipal solid waste and sixty-one dollars per ton for commercial solid waste. The tipping fees at MERC for the same time period ranged from twenty-six to thirty-five dollars per ton.

In the *City of Auburn* case, the question whether a plaintiff that did not seek to place trash in the interstate market could challenge a similar ordinance on Commerce Clause grounds was not squarely presented. *Id.* at 11 n.13. The present case, however, presents the issue, which we now answer affirmatively. Even if it is true that Tri-State does not engage in interstate commerce itself, it has standing to challenge the Ordinance on Commerce Clause grounds. The Ordinance inflicts an injury in fact on Tri-State, and as a hauler of solid waste, Tri-State falls within the "zone of interests" protected by the Commerce Clause. *Diamond Waste, Inc. v. Monroe County*, 796 F. Supp. 1511, 1516 (M.D. Ga. 1992). *See also Boston Stock Exchange v. State Tax Comm'n*, 429 U.S. 318, 320 n.3 (1977); *Government Suppliers Consolidating Servs., Inc. v. Bayh*, 753 F. Supp. 739, 761 (S.D. Ind. 1990), *aff'd*, 975 F.2d 1267, 1274-75 (7th Cir. 1992).

The "Dormant Commerce Clause" [5] prohibits states and their political subdivisions from "advanc[ing] their own commercial interests by curtailing the movement of articles of commerce, either into or out of the state." *Fort Gratiot*, 112 S. Ct. at 2023. A neutral regulation that imposes only an incidental burden on interstate commerce is valid as long as that burden is not "clearly excessive in relation to the putative local benefits" the regulation is designed to serve. *Stephen D. DeVito, Jr. Trucking v. Rhode Island Solid Waste Management Corp.*, 770 F. Supp. 775, 780 (D.R.I.) (citing *Maine v. Taylor*, 477 U.S. 131, 138 (1986), *aff'd per curiam*, 947 F.2d 1004 (1st Cir. 1991)). On the other hand, if the interference is nothing more than "economic protectionism," benefit-

[5] "The dormant Commerce Clause, as the term 'dormant' implies, limits the powers of the States in areas where Congress has not affirmatively acted to either authorize or forbid the challenged state activity." *Norfolk Southern Corp. v. Oberly*, 822 F.2d 388, 392 (3d Cir. 1987). *See New Energy Co. v. Limbach*, 486 U.S. 269, 273 (1988) (referring to the "negative aspect" of the Commerce Clause).

ting in-state economic interests at the expense of out-of-state competitors, the regulation is deemed unconstitutional *per se*. *Philadelphia v. New Jersey*, 437 U.S. 617, 624 (1978).

Gray's Ordinance does not facially discriminate against out-of-state interests, and so it escapes *per se* invalidity. Rather, Gray's Ordinance appears to pursue legitimate local goals, by gaining control of the waste stream and promoting recycling and energy recovery. The Ordinance, however, has a discriminatory effect on interstate commerce by prohibiting waste that would otherwise be available for interstate trade from crossing the state line. *Waste Systems Corp. v. County of Martin*, 784 F. Supp. 641, 645 (D. Minn. 1992). Gray and RWF must therefore show valid reasons for this Ordinance other than economic protectionism and must also show that reasonable alternatives to the Ordinance are unavailable. *City of Auburn*, No. 6625, slip op. at 13 (citing *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 353) (1977)).

The entry is:

> Judgment vacated. Remanded to the Superior Court for further proceedings consistent with the opinion herein.

APPENDIX B

STATE OF MAINE

SUPREME JUDICIAL COURT
Sitting as the Law Court

Law Court Docket No. CUM-93-45

TRI-STATE RUBBISH, INC.

v.

TOWN OF GRAY and REGIONAL WASTE SYSTEMS, INC.

MANDATE

The above-captioned cause having been brought before this Court, sitting as the Law Court, from the Superior Court in the County of Cumberland, and it having been heard and maturely considered:

IT IS ORDERED that the Clerk of the Law Court enter upon the Law Court Docket and certify to the Clerk of the Superior Court in the County of Cumberland, the following mandate therein:

> Judgment vacated. Remanded to the Superior Court for further proceedings consistent with the opinion herein.

Dated: October 15, 1993

For the Court,

/s/ Paul L. Rudman
Justice

APPENDIX C

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT

Civil Action Docket No. CV-92-719

TRI-STATE RUBBISH, INC. and
RECYCLABLES UNLIMITED SERVICES, INC.,
Plaintiffs

v.

TOWN OF GRAY,
Defendant

and

REGIONAL WASTE SYSTEMS, INC.,
Intervenor

ORDER

After hearing upon Regional Waste Systems, Inc.'s Motion to Intervene, Plaintiffs' Motion for Preliminary and Permanent Injunction, Defendant and Intervenor's Motion for Summary Judgment and Plaintiffs' Cross-Motion for Summary Judgment and for reasons stated on the record during the hearing on these Motions, this Court hereby Orders as follows:

1. The Motion to Intervene of Regional Waste Systems, Inc. ("RWS") is granted.

2. The Plaintiffs' Motion for Preliminary and Permanent Injunction is denied.

3. Defendant and Intervenor's Motion for Summary Judgment is granted.

4. Plaintiffs Tri-State Rubbish, Inc. and Recyclables Unlimited Services, Inc., their officers, directors, agents employees, servants, and any other person or corporation acting for or on behalf of Plaintiffs:

a. be and hereby are enjoined, effective February 1, 1993, from violating the Solid Waste, Flow Control and Recycling Ordinance of the Town of Gray, Maine (the "Ordinance"), and unless by February 1, 1993 Tri-State Rubbish, Inc. submits a completed application to the Town Clerk of the Town of Gray ("Town") for a commercial hauler's license under the Ordinance and diligently pursue that application before the Town Council, they shall not haul, transport, collect, remove or dispose of Acceptable Waste generated within the Town for a fee, nor shall they solicit new clients from within the Town for the same services;

b. shall comply, effective February 1, 1993, with the Ordinance and in particular, shall deposit all Acceptable Waste generated within the Town and collected by them at the RWS facility only in accordance with the Ordinance; and

c. shall, effective February 1, 1993, deposit at the Town's Recycling Facility located at the Town's Transfer Station any and all recyclable materials that they or their customers choose to segregate from the Acceptable Waste generated within the Town that Plaintiffs haul, transport, collect, remove or dispose of, with said depositing of recyclable materials at the Town's Recycling Facility to be in accordance with the Town's rules and regulations therefor.

5. Post-judgment attorneys' fees and costs incurred in the enforcement of Paragraph 4 of this Order shall be awarded at the discretion of the Court based upon written affidavits.

6. Plaintiffs' Objection to the Defendant and Intervenor's Motion for Summary Judgment is, as Plaintiffs stated, a Cross-Motion for Summary Judgment on the merits; Plaintiffs' Cross-Motion for Summary Judgment is denied.

7. This Order is an appealable final judgment on all claims and counterclaims raised by the parties in this action.

By:/s/ Kermit V. Lipez
KERMIT V. LIPEZ
Justice, Superior Court

Dated: January 26, 1993

APPENDIX D

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT CIVIL ACTION

Docket Number: CV-92-719

TRI-STATE RUBBISH, INC.

versus

TOWN OF GRAY

BEFORE:

The Honorable Kermit V. Lipez, Justice of the Superior Court, at the Cumberland County Superior Court, Portland, Maine, on January 12, 1993.

APPEARANCES:

Ralph A. Dyer, Esq.
Attorney for the Plaintiff

James N. Katsiaficas, Esq.
Emily A. Bloch, Esq.
Attorneys for the Defendant

[2] (This matter came for hearing before The Honorable Kermit V. Lipez, Justice of the Superior Court, at the Cumberland County Superior Court, Portland, Maine, on Tuesday, January 12, 1993.)

COURT: This next matter is Cumberland County docket number 92-719. It's the case of Tri-State Rubbish, Inc., et al versus The Town of Gray, et al. Before we get into the substance of all this, let me again just ask

counsel to identify themselves for the record, and state the party that they represent. We'll start with Mr. Dyer.

RALPH A. DYER, ESQ: For the plaintiff, your Honor, Ralph Dyer.

JAMES N. KATSIAFICAS, ESQ.: For defendant Town of Gray and for Intervenor Regional Waste Systems, Incorporated, James Katsiaficas and Emily Bloch, your Honor.

COURT: The first matter we should discuss is the motion of Regional Waste Systems to intervene. I gather that issue remains unresolved. And Mr. Dyer has indicated that he has no objection to the intervention of Regional Waste Systems. He acknowledges their interest in this proceeding, but is troubled by a conflict that he foresees or sees now if both The Town of Gray and Regional Waste Systems are represented by the law firm. I'm not sure, Mr. Dyer, I understand how that problem affects the ability of your client to put forth his position in this forum. You seem to suggest that in some [3] way, that conflict, as you see it, impacts in some way on your clients. I'm not sure I understand that.

MR. DYER: Well, it's our position, your Honor, that what Mr. Hart proposes to do, in terms of recycling of waste and how he proposes to handle it, are really consistent with what the objectives of the population of The Town of Gray want. He is retrieving waste, or intends to retrieve valuable parts of the waste stream and reuse them or make available for others to reuse. This runs in direct conflict with what RWS wants to do. RWS is motivated to burn that garbage and to promote a legal argument to satisfy that end. And my position is that when I come forward here and say to you that we're really doing something that benefits The Town of Gray and is consistent with the basic underlying purpose of the ordinance, that I'm met with two people who are standing up, saying, "No, that's not true." And I think that my client is prejudiced by having that happen.

COURT: Mr. Katsiaficas?

MR. KATSIAFICAS: Your Honor, RWS is a creature of the communities that formed it. Gray is one of them. Each municipality that belongs to RWS is under an obligation to dispose of all the solid waste generated within its borders, generated by commercial and residential entities. That obligation is why RWS exists. RWS has to dispose of it in accordance with the state law. The state law requires each [4] municipality to reduce the amount of solid waste it generates. Gray is doing that; RWS is assisting in those efforts. RWS has the silver bullet recycling containers that you see in all the municipalities in the immediate area. It has—it under—RWS understands it has the same obligation as its constituent municipalities, to take care of solid waste while also promoting recycling of waste that is capable of being recycled. There's no difference, here. There's no divergence of interest. RWS and Gray have identical interests, and therefore, it's reasonable that the same law firm can represent both. The conflict of interest is something that the client should raise with its own attorney. That hasn't been raised here. Both clients are aware of the dual representation and consent to it, because their interests are identical.

COURT: Yeah. I—Mr. Dyer, do you—

MR. DYER: I just want to point out, just to remind the Court that in our brief we cited §—38, MRSA, § 1304(A)—(4)(A)(a), which says that all contracts which mandate the delivery of recyclable waste is part of the waste stream to RWS are now abrogated. That obligation no longer is enforceable. RWS' contract with Gray provides that it shall deliver all solid waste, or actually, all acceptable waste to RWS, except those portions of the waste which were being recycled, both in terms of quantity and type, at the time that contract was signed. And RWS' claim is that they have a right to all other material, [5] and they make the decision whether to recycle or not. 1304(B)(4)(A)(a) says that provision is no longer enforceable and the municipality should have

the right to decide its own recycling programs. And that is the heart of the conflict here, your Honor.

COURT: Well, I—my conclusion, Mr. Dyer, is that that is an issue for The Town of Gray and for RWS to worry about. It seems to be your feeling that if different counsel were involved, perhaps on the part of The Town of Gray, that might be more sympathetic to your position, rather than joining RWS in antagonism to it. But I don't see, in that possibility, to the extent it might have a basis in fact in any way precludes this law firm from representing these two clients who certainly, I believe, understand the issues and the stakes as well as you do. I see no reason why they cannot choose to proceed, both of them, with counsel of their choice. So, for that reason, I do grant the Motion to Intervene. And both entities can proceed, since that appears to be their choice, with present counsel. Let's—

MR. DYER: Your Honor, let me just clarify one—

COURT: —sure.

MR. DYER: It's not that I'm looking for Gray to be sympathetic to our position. It—my concern is it's the double whammy [sic] in expressing a point of view to the Court or ultimately, at best, if appropriate, to a jury. [6] COURT: Sure. I understand. Okay. All right. Let's move on, now, to the merits. And there is so much here that it's, frankly, hard to know where to begin. But let's begin in this fashion. Mr. Dyer, I'd like to begin with you. Did you want to say something initially? I did have some questions, but—

MR. DYER: Perhaps we can streamline this a little bit, your Honor.

COURT: —sure.

MR. DYER: This—the motions before us today started with a Motion for a Preliminary Injunction. And let me say this to the Court about your Motion for a Preliminary Injunction. There are two reasons why it was filed, one reason being that we think we're entitled to the relief, anyway, or we wouldn't have brought the motion in

the first place. The second motion is that there is some dicta in some Maine cases which indicate that in these types of situations where there are continuing—there's continuing exposure to fines being assessed on a daily basis, that one should bring a preliminary injunction motion at the outset of the case, in order to curtail the running of the fines and to establish that as a precedent. That is a prudent thing to do in this kind of a case, and that's what—that is one of the moving reasons why we brought the Motion for a Preliminary Injunction. Now, this motion was met by the Motion for Summary Judgment.

[7] COURT: Right.

MR. DYER: And, in fact, although we haven't phrased it as a Cross-Motion for Summary Judgment, it is believed by us that the essential issues in this case are legal issues and not factual issues. And perhaps if we started by addressing the Motion for Summary Judgment, a lot of these other issues would fall into line.

COURT: Sure. I agree with that. I think that makes good sense. The—in that regard, Mr. Dyer, I would like to understand exactly why you feel that this ordinance—and I've—I think I understand how the ordinance works and how it alters the prior practices. I would like to understand why you feel that this ordinance denies your clients the equal protection of the laws, given what I believe is the standard that I have to apply, here, and that is whether the distinction that has been drawn, here, bears a rational relationship to a legitimate exercise of the Town's power in this area, the Town's authority. What—could you state for me, as clearly and concisely as you can, what is the nature of the unlawful discrimination, if you will, unlawful distinctions that you see here?

MR. DYER: Well, there are—setting aside the definition of solid waste for just a moment, and just focusing on the ordinance, I think I might have anticipated your question to some extent. And last night, I sat down and said, "What is the procedure of this particular ordinance

that has an adverse [8] impact upon my client?" And what I did is I said that let's start with §(7)(G) of the ordinance, which says that, "All agreements for trash and waste removal shall be by private contract, and the Town shall have no responsibility for those contracts." Now, that's important because that's what Mr. Hart's company, Tri-State Rubbish, does, that enter into private contracts with residential customers and with commercial customers. So that sets the stage in entering the ordinance, if you will. We then go to §(6)(E), which says—and also, a parallel provision, (7)(D), which says that, "Non-segregated waste shall be taken by the hauler to RWS." And that's all acceptable waste, as defined by §(7)(D). And what that says is that if Mr. Hart and his company, Tri-State Rubbish, pick up residential waste or commercial waste, if it's non-segregated, that is, co-mingled food waste, paper, what have you, that has to go to RWS at his expense. And he has to pay $58 a ton to drop that material. To digress just for one or two sentences, here, there is a two-rate structure at RWS, $58 per ton for commercial waste, and a lesser amount, which I think is $41 a ton, for residential waste. When Mr. Hart and Tri-State bring that waste to RWS, they pay the $58, regardless of where it comes from, on the basis that it is impossible for RWS or the community to determine which is which, so they just charge the higher rate across the board. Then that leaves us with a question, what do we do with the segregated waste, the [9] recycled material? There is no provision in the ordinance which deals with the question of segregated waste hauled by private contract. §(4)(A) says that, "Only residents can use the transfer station." And in that—by that definition, the Town excludes commercial haulers or private contractors from that definition, and haulers are not permitted to enter the transfer station to unload anything. §(7)(H) says that, "Any private contract shall require that all recyclables shall be brought to the Town in marketable condition." It doesn't indicate who is to bring that

material to the Town. But we do know that the disposal point is the transfer station, and we do know that the hauler is not permitted to enter the transfer station, which leads us to the inevitable conclusion that it is only the generator of the waste who can bring it in. And that is consistent with provision (4)(B), which says that, "All resegregated, recyclable material shall be brought to the transfer station only by the generator." And that leads us to a couple of questions. The impact of that system is that Tri-State cannot engage in a contract to pick up recyclable materials for its customers. Its customers, if they are to recycle, have to bring their own waste to the dump, or their own recoverable, recyclable waste to the Town transfer station. And Mr. Hart cannot do that. Mr. Hart is absolutely barred and prohibited from entering into that business by the terms of this ordinance. Secondly, it is our position that if a person is [10] to use a private contractor to haul his waste, he must bear, indirectly, the cost of the tipping [sic] fee. And the letter—the May 11th, 1992 letter from the Town, which we've attached, which sets forth their reasons for their statute clearly indicates, by reference and by direct statement, that the purpose is to force people to recycle and to bring their material to the transfer station. And if a person doesn't do that, then they're going to have to bear their cost of tipping. Now, we don't understand why Mr. Hart's customers, or Mr. Hart himself, acting for those customers, should be barred from the transfer station, simply because they have signed a private contract. It is the same people in the community who are generating waste, whether residential or commercial. Those people can have access to the facilities, but they are indirectly barred from using those facilities if they employ Mr. Hart. The result of that is that Mr. Hart's business has been decimated because he has had to raise his fees to cover the cost of tipping. Mr. Hart's testimony in his affidavit—and if the Court desires, he can testify. I have him here today—to testify that when this ordinance

passed, he had approximately three hundred residential customers in Gray. He's now down to a hundred and fifty customers in Gray, and he's losing $8,500 a year, after having raised the fees. And it is a declining spiral, that what Gray is doing is saying that, "We don't want private contractors in this town. We don't want [11] you doing business in this town. We want to control all the waste." And that is the discrimination that is happening with Mr. Hart, and it's discrimination under the due process clause, it's discrimination—it's a taking of his business, it's discrimination under the—it's a violation of the commerce clause, and if we go on—ultimately, when we get into the definition of solid waste, it violates the antitrust laws, because it's inconsistent with State policy, as well as what I believe to be the real true municipal policy, here.

COURT: Mr. Dyer, the—that's a very good and very clear explanation of what's—of what the issue is, here, as you see it. The—it's clear that, at least in part—well, let me do this. Rather than have me state it, I'd like, at this point, to ask Mr. Katsiaficas, number one, if he agrees with your analysis of what the ordinance does, and if not, I'd like to know why. But then, to the extent that's accurate, I'd like to know what purposes, from the Town's perspective, that scheme that Mr. Dyer has just described, serves? Mr. Katsiaficas?

MR. KATSIAFICAS: Thank you, your Honor. As the Court has noted, this is a very difficult burden for the plaintiff to overcome, in that the equal protection clause challenge must overcome an argument of presumptive validity on the part of the municipal ordinance, number one, and number two, with regard to these, you have to simply show that—you have to show that there's no rational relationship under any circumstances, any [12] set of circumstances between this ordinance and legitimate State ends. We believe that the legitimate legislative ends of the Town Council, in adopting this ordinance, are to ease the administrative and enforcement burden on the Town. And that's not a mere summary. It's

simply—if Tri-State and the other four private haulers that do business in the town were to take their solid waste that they collect from businesses and from residences to the transfer station, the Town will have to police it, to police the transfer station to make sure that only Gray waste is being accepted, and to make sure that there isn't unacceptable waste being brought in.

COURT: Now, it would have to police that because of its contractual relationship with RWS and the obligations that the Town has to RWS in light of that contractual relationship, is that correct?

MR. KATSIAFICAS: In that regard, and also because The Town of Gray, as it had been doing, was underwriting the tipping fee for everything placed at the transfer station. It wouldn't want to be underwriting tipping fees for trash collected in New Gloucester, for example, and brought into town by Tri-State. We're not alleging that they've actually done this, but simply there's a potential for doing that. And we ask the Court to take note that there have been allegations of problems of waste diversion. It's not unthinkable. It's something that the Town would have to police, [13] would have to administer. There's a cost to that. We're trying to minimize that cost and the Town's tipping fees.

COURT: Right. But until this new ordinance was passed, how was the Town—and under that prior relationship, Mr. Hart, his business—I mean, they could pick up waste directly from a residence or commercial establishment and take it directly to RWS, is that correct?

MR. KATSIAFICAS: To—they would take it, as I understand it, to the Town's transfer station.

COURT: Okay.

MR. KATSIAFICAS: And the Town would then charge $10 per ton. And then the Town would pay for transportation of all of the waste collected—

COURT: Okay. So they—

MR. KATSIAFICAS: —whether you, yourself, brought it or whether Tri-State brought it.

COURT: —okay. So, under the prior relationship, Mr. Hart could not take it directly to RWS, is that correct?

MR. KATSIAFICAS: As I understand it, he did not. He was to take it to the transfer station and then the Town would take it to RWS and pay the transportation costs, as well as the $40 per ton tipping fee. Since the Town was paying 40 and only charging 10, in effect, Tri-State's costs were being subsidized by the Town.

COURT: Well, obviously, in that rel—in that situation, [14] they could charge their own customers a lot less, because they only had to pay the $10 to the Town, is that correct? That was—

MR. KATSIAFICAS: That's correct.

COURT: —right.

MR. KATSIAFICAS: What this ordinance now does is say to any hauler collecting residential and commercial waste within the Town, "You have to bring that waste directly to RWS and pay RWS the tipping fee." That tipping fee for municipal waste is $43, for private—for commercial waste, $61. So there's a differential there. They're responsible—that becomes a cost of doing business. It's not just a cost of doing business, however, for Tri-State. It's a cost of doing business for the four haulers that are licensed to do business, and actually do business in the town. And those haulers are identified in Town Manager's Aubert's [sic] affidavit. So there are other entities doing business in the town. It's not—I don't—whether it's decimated Tri-State's business, I don't know. But there are other haulers that are licensed and are doing business.

COURT: Okay. But, now in this situation, if Mr. Hart can now take waste generated in The Town of Gray directly to RWS, how does the Town keep track of what is going directly from The Town of Gray to RWS? I mean, the Town does have an obligation, does it not, to still make sure that all its [15] acceptable waste, excluding some recyclable material that can be taken out, it still

has an obligation to make sure it all goes to RWS, isn't that correct?

MR. KATSIAFICAS: Well, that's one reason for these counterclaims, because, in fact, we understand from the pleadings here it's not going to RWS. Acceptable waste and the recyclable portions of the acceptable waste, according to the affidavits, are all going to West Paris, being separated—

COURT: Right. But—so how do you—but how would—

MR. KATSIAFICAS: —I underst—

COURT: —but how do you make sure? How do—you talk about the burden of policing. How do you police—if you have the commercial haulers dealing—taking waste directly from a generator to RWS without any intervention by the Town at its transfer station, how do you make sure that waste generated in The Town of Gray is getting to RWS?

MR. KATSIAFICAS: —well, we avoid—we don't know. I mean, we have to take it on faith that—

COURT: I mean, they have to do that, under their—I mean, they're now licensed, is that correct?

MR. KATSIAFICAS: —well, they haven't—they have not—

COURT: But they're supposed to be?

MR. KATSIAFICAS: —but they're supposed to be. And if they were, that would be their obligation—

COURT: Okay.

[16] MR. KATSIAFICAS: —and on penalty for not doing that, they could have their license revoked.

COURT: Right.

MR. KATSIAFICAS: We would have to police it in that sense.

COURT: Sure.

MR. KATSIAFICAS: But we don't believe that the obligation is as onerous as posting an extra person at the transfer station or doing the manifest system, as we find with State and Federal hazardous waste laws.

COURT: Okay.

MR. KATSIAFICAS: Another reason, though, we're trying to simply cut the costs of solid waste disposal for the towns. As we know, the State law posits all the responsibility on the municipality. The municipality has normally pledged its full faith and credit, but it also has to pay—it is paying for all of the tipping fees for waste brought to it. In other words, if you have a residence or a commercial entity in The Town of Gray, and you're willing to bring your own waste over to the transfer station, the Town will pay the tipipng fee, as long as you segregate the waste into recyclable and non-recyclable quantities. That is to promote recycling. The Town has an obligation under State law to promote recycling to reach State goals, and there's a penalty for failure to make reasonable efforts to do so.

COURT: Okay. Okay. Now, why—Mr. Dyer says that, under [17] the Town's scheme, only the generator of the waste can segregate in the way that you describe, and then bring the waste to the transfer station. Mr. Hart could not perform that function. Is Mr. Dyer correct in that regard?

MR. KATSIAFICAS: I don't read the ordinance that way. I think we're dealing with something speculative, in that, number one, I don't believe Mr. Hart has ever tried to bring recyclables to the transfer station, and, two, I believe that his intent is to be able to sell those to other entities. So I don't think that question is—in—at issue is really before the Court at this time. It's only in the abstract. But also, I—as I read §'s—well, the sections that were cited with regard to bringing commercial waste, commercial entities bringing their own, doesn't deal with —don't deal with haulers. It's simply a store operator, commercial entity. You can bring your own waste if it's segregated into recyclable and non-recyclable. You can bring it to the transfer station and there's no cost. Otherwise, you have to pay a $10 fee.

COURT: Well, you're—

MR. KATSIAFICAS: As to—I'm sorry, your Honor.

COURT: —I gather you're suggesting that there's something that—it doesn't—and this seems to be borne out by some of Mr. Dyer's arguments. I mean, Mr. Hart, for perfectly legitimate business reasons, I guess, would like to be able to deal with recyclable material in some way that might be more [18] advantageous to him in terms of the market. I mean, if he has to just bring it—if he just hauls it—

MR. KATSIAFICAS: Right.

COURT: —to the transfer station to be disposed of as waste, that doesn't, I suppose, do him much good, when there might be a market out there, arguably, for this recyclable material. That—he'd like to get into the market, is your position, with that recyclable material?

MR. KATSIAFICAS: Well, apparently. That's what he says. And what I'm saying is §'s (7)(G) and (H) talk about—(7)(G), "Any agreement for the collection, transportation and disposal of residential, commercial or industrial solid waste and recyclable materials shall be by private contract between the person and the commercial hauler," et cetera, and then (H), "Any agreements for the removal and collection of recyclable materials must provide that the materials will be received by the Town or its designee in marketplace condition." What I'm saying is that out of the universe of solid waste, we have recyclable materials. They're not separate and apart. Recyclables are within solid waste.

COURT: Right.

MR. KATSIAFICAS: And that was the decision of the Federal District Court in *The Town of Auburn versus* —excuse me—*Tri-State versus The Waste Management Company*. All of this material belongs to the Town and is pledged to RWS. If there's [19] any recycling to be done, it's through the Town. I don't read the ordinance to say that the hauler can't bring recyclables there. The question hasn't been raised, and it's not before the Court, because, in fact, Tri-State hasn't been bringing them there

and hasn't made any attempt to bring them there, as I understand it.

MR. DYER: Well, I'm going to object to that last comment, your Honor. There's nothing in the record to that effect, and if that fact is being asserted by Mr. Katsiaficas, I'd like to have the opportunity to have Mr. Hart testify that, in fact, he has spoken to Town officials on that very point, and has been denied access to the Town.

MR. KATSIAFICAS: All right. What is in the record is that since July 1, 1992, there has been no delivery of recyclable materials under this new ordinance to the transfer facility, and that's in the affidavit of Public Works Director Neal LaValley [sic]. And I'll simply rest on that. But I think that the ordinance is susceptible of allowing these people to bring their recyclable materials here. And we'll see where that goes. Finally, there's not only the cost of avoidance, there's not only the avoidance of administrative enforcement costs, but there's also the State recyclable requirements. First of all, we don't read the waste handling agreement as having been abrogated by 38, MRSA, § 1304(B), sub (4)(a). It simply provides that that agreement, the waste handling [20] agreement can't prevent the municipality from recycling more if it wishes to do so. The municipality wishes to recycle more. It was recycling 240 tons per year, approximately, at the time of the waste handling agreement. There is now an amendment to that waste handling agreement dated April 21st, 1992, and it's in the file, which allows the Town, by July of next year—of this year, excuse me, to recycle up to 550 tons per year, more than double what it had been recycling before. It—that's what the Town wants to do. RWS is its entity. RWS allowed that. And so there's no abrogation, here.

COURT: But that is, in fact—in order for the Town to do that, because it does have the effect of excluding waste in that amount from going to RWS—

MR. KATSIAFICAS: That's correct.

COURT: —I mean, RWS had to agree to that, is that correct? To allow the Town to increase its recyclable waste in that amount?

MR. KATSIAFICAS: That's correct, your Honor.

COURT: Okay.

MR. KATSIAFICAS: And that has been done. And that's—in order to help this city, the Town reached those recyclable goals set by the State. So those are the three reasons that the Town had in adopting this ordinance. We believe that that ordinance is rationally, reasonably related to those legitimate ends. It—people may differ as to whether it's the ideal [21] ordinance to effect that, but we're not looking for ideals, just that it be rationally related, and we think that it is.

COURT: Okay. All right. Mr. Dyer, you make the further argument that this scheme violates the commerce clause. And I'm trying to understand in what way that occurs, since it seems that most of the case law in this area, at least that has reached the Federal Courts and the U.S. Supreme Court, has involved efforts by states to restrict or put a heavy burden on the importation of waste into the state. And I'm trying to understand how that—those kinds of cases relate to this situation.

MR. DYER: Well, except for the *DeVito* [sic] case, which talked about taking waste from Rhode Island to Massachusetts to burn, as opposed to putting it in a landfill. And Rhode Island said, "We wanted a landfill. You can't burn it." So that's—there's a little bit of a twist on that particular case. But our position on the commerce clause is this, in the *Port Raddio* [sic] cases, *Chemical Waste Management versus Hunt* [sic], and the *Port Raddio Landfill* case, the U.S. Supreme Court said that, unequivocally, garbage is now a commodity. It's a valuable commodity being exchanged in trade throughout the United States. It has recoverable components in it which are of great value. And even without the recoverable components, as we have in this case, it is raw material for the generation of electricity which is sold

in [22] interstate commerce. So it is unequivocally a commodity traded in commerce. The question now is, in this particular case, I submit, would be the extent of the effect on interstate commerce, which is occasioned by this particular ordinance. Is this a serious impact or is it a marginal impact? And that's a factual question to be decided by the Court after hearing the evidence, and in hearing about how much material is being dealt with. In terms of EMWAC [sic], I can suggest to the Court that it appears that we're talking about 16,000 tons of recyclables a year. We're talking about 64,000 tons a year of waste generally. In RWS, we're talking a much larger amount of material. So we're talking, in the RWS context, in terms of controlling waste, we're talking a significant amount of material. What happens is when you have this restriction on where waste can be taken, which is an essential element in every one of these cases that's been decided, the *Shelley* [sic] case, the *DeVito* case, the *Fillaberro* [sic] case, the issue is does a state have the right to regulate where you take that material? And the most recent case, which is the Rhode Island case, *DeVito*, said, "You can regulate, as long as there's a rational reason for it." And it has to be something more than purely economic. It cannot—and in Rhode Island, it was—the question was whether they had to have the waste because they had to pay the bonds to develop the landfill. And that was considered to be insufficient by that particular [23] Court. So what we have here is a question in which we're torn. Are we taking the waste to RWS as part of a commercial project to supply inventory or fuel for the generation of electricity, or are we taking it to RWS and the transfer station in order to promote recycling and the reduction of waste? And I submit that what Gray is doing in this particular case is oriented towards a reduction of the waste stream and recycling. It has nothing to do with fueling RWS. In fact, RW—Gray is reducing that fuel stream.

COURT: Well, but it's—I mean, it's both. I mean, you've acknowledged this—these goals that, to some extent, are in conflict. The RWS was conceived, in large part, as an enterprise that would allow communities to solve their landfill problems, their solid waste disposal problems.

MR. DYER: That's correct. That's correct.

COURT: And it involves an alternative way of disposing of solid waste, and it becomes economically viable, in part, because the energy generated can be used to generate electricity and so forth. So there is an obligation to make this solid waste available to RWS, to meet its contractual commitments, to allow it to be financially viable. That was the initial impulse.

MR. DYER: That' right.

COURT: Now a few years down the road, there becomes this recognition that, even with these incinerators, we still [24] have a disposal problem. But yet—

MR. DYER: And we also have a continuing pollution problem.

COURT: —and—exactly. And so, it makes a lot of sense to try to recycle waste, as well. And that is somewhat counter to the interests of RWS, which lives off waste. So now you have to try to reconcile these two goals. And what you see, as Mr. Katsiaficas is describing, is the Town, pursuant to a State scheme, trying to try to balance. My point is those are both, are they not, legitimate objectives? Trying to get waste to RWS—

MR. DYER: Yes, they are.

COURT: —and at the same time, try to meet recycling goals. Those are rational objectives, and they're difficult to juggle. So what—even as you state the proposition, what is impermissible about the State—the Town trying to further those two objectives?

MR. DYER: Well, the commerce clause presents a very good focusing point, if you will, because what happense here in this contest between RWS and the Town,

between fuel and recycling, which—and that—those priorities, by the way, have been codified in Chapter 24, that incineration is now the fifth highest or next-to-last priority for disposal of waste. What happens in those—in that situation is that the Town is trying to control the waste stream in order to match the State recycling goals, and to make—honor its supply of fuel to RWS [25] by putting the waste hauler in the middle. They're taking an established business that's been around for twenty years, and they're saying, "We're going to make you the garbage policeman, and we're going to attach economic sanctions or taxes to your business in order to force the general public to recycle." And we're saying, "Wait a minute. Under the commerce clause, it may be a valid way to go—that the object may be valid, which is to create recycling, but to interfere in the commerce stream and interfere in business by achieving this is not right." That's not what—that's not the easiest or best alternative to go about doing that. There are several other ways. The Town's stated objectives for the ordinance, which are less than candid, I think, because they say that they want to preserve their administrative cost and they want to force people to recycle. But the fact—let's take those as valid. When you're talking about administrative costs, they're say—there's no—they're saying, "We have a sense that Mr. Hart will use the free tipping as a way to subsidize the rest of his business,, and we don't want that to happen." As a matter of fact, that's a criminal offense, according to Chief Chitwood and RWS. That's a criminal offense. It's diversion, it's embezzlement, it's operating under false pretenses, all that sort of thing. There are also sanctions applied to that, in terms of fines, loss of license. Those are the things that have operability. Those are the ways to go about controlling that sort of situation, [26] as opposed to saying to somebody, "I'm not going to go about doing this in this way." Now, relevant here is what other towns do and how they deal with the problem, which is considerably different than what Gray is doing. For example, in most other towns—

MR. KATSIAFICAS: We would object. We don't have any evidence on the record as to what other towns are doing in this, your Honor.

MR. DYER: Well—

COURT: Well, let me—

MR. DYER: —they represent all the other towns, so—

COURT: —well, let me—I don't—that might be interesting, but what I want you to tell me, Mr. Dyer, is what is it that you want your client to be able to do? What is it that, given his druthers, he would like to be able to do that he cannot do under this scheme?

MR. DYER: —okay. Under commercial accounts, what he would like to do with commercial accounts is he would like to say, "Okay. Let me put out two containers, one for recyclable materials and one for solid waste, in the true sense. Stuff that has been discarded. It's unwanted, unused,, unwanted, unneeded. And it is material that is solid waste in every sense. The other barrel, let me call that recyclable materials. Give me the option to take those recyclable materials to the transfer station and tip them for free. Or [27] let me take those materials to my own station, my own recycling process—or processing center, and recover the value myself." And we distinguish between the solid waste and the recyclable materials, and I can go into a long argument about solid waste and the authority of the State, but that's what he would like to do.

COURT: Now, if he's allowed to do that—well, first of all, even under the existing scheme, he was not allowed to do that, isn't that correct, because he can't—the Town has its own contractual commitment to RWS about what's going to happen to solid waste generated in the Town of Gray. He couldn't do that before this ordinance, isn't that correct? I mean, he can't—

MR. DYER: Well, yes—

COURT: —in other words, he can't just take it—he can't take solid waste generated in the Town of Gray wherever he wants to?

MR. DYER: —oh, no, no, no, no. No. He'd have to take it to RWS under the program which other towns have implemented and which we're suggesting here. He would take that solid waste to RWS and pay the tipping fee of $58 a ton for that commercial waste.

COURT: Oh, but it's the recyclable stuff he'd like to take where he wants?

MR. DYER: The recyclable stuff, which gives him an [28] opportunity, and his customers an opportunity, to recoup and reduce their costs by recycling, which is just exactly what the State and Gray want to achieve, here. As it stands now, he can't do that. There is no place for him that is legal to take the recyclable materials. The only person that can recover and reuse and dispose and sell those recyclable materials is the generator, who must take them himself to the Town transfer station, where they have the exclusive right to handle that material.

COURT: Well, the Town says that what that—that only—I think this is what the Town says, only in that fashion are they able to quantify what's happening to recyclable material and therefore, document the efforts they're making to meet the goals that the State says that these towns are to meet.

MR. DYER: No. That's not true. What—

COURT: That's not what they're saying, or that's not—

MR. DYER: —I don't believe that to be a true statement. They're saying that, "We have to have a toll station where all the waste goes through so we can count and see what happens." Well, that may be the bureaucratic way to go about doing it, but it's not the business way to go about doing it. We're faced with two disposal opportunities, here, generally speaking. We're faced with RWS, in which we have a quantified, known amount of waste which was dropped last year at RWS from The

Town of Gray. We know, for example, that if 100,000 tons of [29] solid waste went to RWS, that's documented. The rest of the material—and the goal talks about waste reduction. It doesn't talk about counting. It talks about waste reduction. So we know, if you take that 100,000 tons that went to RWS last year, and we reduce it down to 50,000 tons, we've met the goal, because the rest has to be recycled, or it's winding up on the back roads somewhere. And that recyclable waste and that recyclable activity is easily monitored that way. You don't have to have a toll booth to take everything through. It's management by exception. We don't need to interfere with commerce to that extent.

COURT: Okay. All right.

MR. DYER: With residential customers, Mr. Hart and his customers should have the same rights that every other residential person has. No other town that I know of imposes upon a resident the obligation to pay for his own tipping. In fact, I believe that flies in the face of § 1305—I think it's 1305—correct me if I'm wrong—which says that every town has an affirmative duty to provide waste disposal for its residents. And I think that it is—if you're going to charge some residents for the use of a mandated facility and not charge others, that's wrong. And what I'm saying with the residents is Mr. Hart should be able to pick up that material, solid waste, take it to RWS and have it paid for, just like anybody else. And it's easy to see whether or not he's comingling commercial [30] waste with that material. And other towns monitor at the RWS and EMWAC and every other landfill to make sure that the materials coming in bear some resemblance to the town. If you're taking Gray material in, and all of a sudden, somebody comes in with garbage and it's got all the mail addressed to Freeport, or it's got material that indicates that it came from Freeport in it, which is easily done—people do this all the time, then you can tell that somebody's cheating. And that's what's going on in RWS today.

Chief Chitwood and those people are doing that today. But he should be able to use that—Mr. Hart and his residential customers should be able to use RWS on the same basis as anybody else.

COURT: Mr. Dyer, it would seem to me that the—what Gray is doing is very similar to what the Town of Auburn was doing in the case that's been cited by the Town, here.

MR. DYER: Not entirely.

COURT: Okay. What is—

MR. DYER: Not entirely. In Auburn, we don't have the question of residential waste, because Auburn has its own municipal pick-up. So we don't have that issue. We do have the commercial waste question, and that argument was—the Auburn case was argued before the Maine Supreme Court yesterday. And Chief Justice Wathen pointed out—he said—I think it was Justice Wathen pointed out that there's—Judge Clifford said, "When somebody puts material in a container, that's [31] garbage, and that's the end of it." And was the key—one of the key parts in Judge Delahanty's decision. And I've taken issue with that as a factual basis in that particular case, saying there's no evidence in the record to support that kind of a conclusion. If the Court drew that conclusion sua sponte, that's not right. People today are—I mean, years ago—one argument made yesterday was that butcher shops and grocery stores used to set aside a box, and you put all the meat bones in it, and the rendering company would come by and pick those up. Now that's been going on for a hundred years. Now we have people setting—and they are statutorily mandated, in some cases, to set aside high-grade paper, to set aside corrogated board, and to do all these things. And to suggest that somebody, by throwing it away, is saying, "I am discarding it and I have no further use for it" is wrong, because in most of those instances which I've just mentioned to you, the generator is paid for the material or he barters a lower cost of disposal for that material.

And newspaper, for example, is now $15 a ton. And it can be sold for that, at $15 a ton. Now, it dosen't pay a hauler to come in and pay somebody for that newspaper, because he can't get enough money out of it to cover his hauling cost. But it is a useful discount to the price to be able to get that material. And those are the kinds of issue in the Auburn case which we argued yesterday, and which we believe the Law Court will—I hope the Law Court will agree [32] with our position on that, that we've got to look at the evolution of the statute from 1985, when RWS was first formed, through 1991 when these amendments and priorities were set by the State statute.

COURT: Finally, Mr. Dyer, in terms of your positions, the antitrust monopoly arguments that you make, it—

MR. DYER: That hangs on one issue. What's the definition of solid waste? The antitrust issue is does the State, in Chapter—in Title 30-A, intend to give the towns the exclusive right to handle all recyclable waste, regardless of the value? Does the town have the right to go into your house and say, "When you put the Cola Cola can down, it's discarded. It's now ours and we take the five cents." Does the town have the right to go to a sawmill and say, "You have to give us the sawdust." Those kinds of issues, and if the State definition of solid waste does allow that kind of activity, then we have no antitrust violation. If, however, Mr. Hart is permited to take recyclables and the State statute permits him to do that, and Gray intercedes and intervenes and says, "We want it," then we have an antitrust violation.

COURT: Okay.

MR. DYER: And a similar argument is made with taking, same kind of argument would apply there.

COURT: Okay. Mr. Katsiaficas, do you want to respond briefly to those points, the commerce cause and the monopoly, [33] and then I'll tell you what I've—what I'm inclined to do. Go ahead. I know you've done that in your brief. Why don't you just briefly restate it?

MR. KATSIAFICAS: Well, I will try to briefly restate that, your Honor. I—just for the big picture, there is a requirement that each municipality provide solid waste disposal services for domestic and commercial solid waste generated in the boundaries. It isn't a requirement that we provide it free of charge to all commercial and residential accounts within the town. We're not trying—The Town of Gray and RWS are not trying to put Tri-State or anyone out of business. It's simply trying to legitimately regulate those businesses. When we get to the commerce clause argument and the challenge to that regultory authority, first of all, there's no allegation here that Tri-State is engaging in interstate commerce. Tri-State is doing the collection, the disposal, the alleged recycling, whatever. They are the ones who we're looking at in this case. We're looking at what their actions are. There's no interstate commerce that's even indirectly implicated by what they do. There's no standing to bring those interstate commerce claims. Even if they did have standing to bring them, even if somehow interstate commerce were implicated, we believe that the cases cited by the plaintiffs, the *Port Raddio*, the *Alabama* case, are inapposite here because those cases deal with a prohibition on waste [34] entering a state, not a designation ordinance such as this. With regard to the Rhode Island case, again, that was a ban—that was an economic regulation that was designed to keep tipping rates artificially low for the municipalities by putting the burden on commercial waste and preventing it from leaving the state. We don't have that situation here. There are legitimate State ends being furthered, here. There's a tension between those State ends, but the Town is trying to do that in a way that balances everyone's interests, and in a fair way, and one that's rationally related to those ends. So, therefore, it's—it is not in violation of the commerce clause. With regard to antitrust, the definition of solid waste couldn't be clearer. It includes those items that are useless, discarded or unwanted, regardless

of whether they still have any value. That was decided by Judge Carter, in his decision where he found, under the very similar Auburn ordinance, using the State definition, that there was no violation of antitrust law. And with that, we'd just rest on the briefs, your Honor.

COURT: All right.

MR. DYER: Your Honor, my—perhaps I could make a suggestion at this point in time. It is obvious, from the arguments given to you by myself and by Mr. Katsiaficas in the last couple of moments, that many of the issues in this case will rest on the definition of solid waste. And it seems to me that since the Law Court heard this argument yesterday and is going [35] to be providing guidance—or hopefully, will be providing guidance in this area, that maybe the issues dealing with the affirmative defenses to the case or the affirmative claims in the case for antitrust violations and so forth should be deferred until the Law Court has spoken on that. And that would be for judicial economy, the avoidance of conflicting decisions and all those sorts of issues. And maybe what we could do is focus on—simply on the ordinance itself as to whether that is constitutionally defective, in terms of the access that Mr. Hart is to have to the transfer station and the ability to be treated equally under those things. And perhaps—I'm not sure that the Court can do this, but I think it can, make a division line in the case along those lines.

MR. KATSIAFICAS: If I may, your Honor?

COURT: Sure.

MR. KATSIAFICAS: Sorry.

COURT: Mr. Katsiaficas?

MR. KATSIAFICAS: I don't see that a division line can be drawn, here. But I would say that there are three counterclaims, one of them the licensing. It's very straightforward. There's no dispute as to that. There's no dispute that they're diverting acceptable waste. If there's any dispute over the definition of recyclable materials and whether those are exempt from full control, that

might be answered by the Law Court, perhaps that might be held in abeyance. But it's very clear [36] as to the first two counts of the counterclaim that we're entitled to summary judgment. There's no dispute of genuine issue of material fact.

MR. DYER: I think we can deal with the licensing question in terms of whether or not the application form is a bar to becoming licensed. And I think we can deal with that, and I'm prepared to argue that.

COURT: Well, let me tell you the dilemma that I have on this, gentlemen. And, Mr. Dyer, I have to say I think you're—you are doing a very good job arguing a very difficult position. I—and I'll be very candid with you that I feel that even on further reflection, I'm going to find it very difficult to accept your arguments. I mean, I don't want to shortchange you or your client in terms of the consideration that is given to this. What I'm saying is that if I take this under advisement for the purpose of giving a fully articulated response, it's going to be three months before I get this out, because I've got such a—frankly, a huge backlog of cases. And I'm saying to myself, given the reservations I have about your position, am I just taking all that time to try to give a more fully articulated statement of what I think the conclusion should be? Now, I can do that. The down side for you all is that you don't have a decision from me for all of that time. If I go forward now with a bench decision, it will not be, obviously, as fully articulated as it ideally [37] should be, and I'm concerned that your client may feel that he's been given short shrift, although I—I mean, I have read all this stuff, and I think I understand it. The —so, in a sense, I'm just sharing with you my own thought process as I decide what to do, here. I feel as that, frankly, in fairness to you all, is I should decide this here and now. And in doing that, I will not do it as fully as I might like, as I would like, but it allows you to know where you stand. And if I really felt there was a lot of uncertainty, here, I wouldn't do this. But I'm

going to tell you where I come out on all of this. And what that does is allow you to all move forward from there and perhaps get this more quickly to the forum where it ultimately has got to be decided. Where I come out on this, Mr. Dyer, and this will not be good news to you or your client, is that I begin with the proposition that this area of solid waste has been traditionally, for decades, an area where the municipality has had a great deal of authority to regulate, and to regulate in ways that have traditionally been monopolistic. I recently looked at some very old Maine cases going back to the turn of the century, where some of the very same arguments that you're raising now were raised about the authority of the town to basically grant a monopoly to a private enterprise to deal with offal and swill, as they called it then. And the Law Court was very clear that, in the town's exercise of its police power, that it could, in effect, [38] grant a monopoly to a business to carry out the function of disposing of the offal and the swill. My point is that—and I'm sure this must be very hard for Mr. Hart to accept, that he is conducting his business in an area which traditionally has been, and increasingly is becoming even more so, subject to heavy regulation. And, in a way, the stakes for the municipalities and the public interest become greater and greater all the time because of the increasing problems of solid waste. It seems to me what we have here is The Town of Gray, pursuant to its home rule powers, which are very substantial, and pursuant to the exercise of its police power, an area where it has a great deal of discretion, it is exercising its home rule powers and its police powers, to try to come up with a rational scheme for dealing with two not easily compatible objectives, number one, solving its landfill problems by meeting its obligations to RWS, and at the same time, meeting State-imposed obligations and mandates with respect to recycling more and more of its waste. And to meet those objectives in a way that is consistent with the Town's own limited financial re-

sources. And to some extent, Mr. Hart and others do find themselves in the middle of all of this, and it unquestionably is having an impact on the business of Mr. Hart and others, no question about that. But because they are conducting a business in this area, I'm afraid that that is a price that they are being asked to pay legitimately [39] by government regulation. I simply do not see anything in the Town's ordinance that violates equal protection, because, given the standard that applies, here, it seems to me that the Town has arrived at a rational scheme for addressing administrative costs, for trying to police the way in which waste is handled in The Town of Gray, in a fashion that is not unduly burdensome for them, and in a way that will help them meet their recycling goals. Now, you may say, as you have, that there are other ways that they could do that. And there probably are other ways that they could do it. And maybe even other ways that are more sensible, from a businessman's point of view. But I don't think that I, as a Court, have the authority to simply tell the Town that they ought to do it differently. They're doing it rationally to meet legitimate objectives, and I think they have the authority to do that. In terms of the commerce clause issues, I just—I mean, I recognize the grand scope of the commerce clause, and I'm reluctant to say that what the Town is doing does not have some effect on interstate commerce. But I can't imagine that what the Town is doing is having such an effect on interstate commerce that it violates applicable constitutional standards. The point is, again, that it seems to me they are pursuing a rational objective, and it does require, to some extent, that they control the destination of the waste. And in that sense, yes, it restricts the free flow of commerce, taking the view, as you have, correctly, [40] that waste is a commodity. Clearly, it is. And I believe, for all the reasons I've already stated, they can control the destination of that waste, and they're doing it for perfectly legitimate and rational reasons. I also take the view that

solid waste does have the broad definition that has been attributed to it by Judge Carter, and I believe, in the Auburn decision, as well, by Justice Delahanty, and that what we have here is the municipality acting pursuant to a clearly articulated and broadly stated State policy as to how these communities are to deal with solid waste, broadly defined. And becaues the Town is acting pursuant to that clearly articulated and broadly stated State policy, that, in effect, the Town is immune from these monopoly, these antitrust arguments that you're raising. It is the State action immunity, if you will, that applies in this area. I realize that you have raised other arguments, as well. I believe those are the primary ones, and I'm not going to try to address every one that you've raised, other than to say that I have reviewed them, and I do not—I did not feel that they ultimately had merit. Believe me, if I thought that taking this under further advisement and thinking about it and studying it was going to change those conclusions, I would not have done —made the decision that I now make. But I just know it won't, and therefore, it seemed to me that I had an obligation to you to state where I come out, to try to move this along. Now, [41] having reached those conclusions, I'm going to have to memorialize this other than just on the tape. I'm going to ask Mr. Katsiaficas to prepare an order that—and what I'm suggesting, Mr. Katsiaficas, I don't want you to try to sort of reproduce what I've tried to explain here. I mean, I want the record to stand for that. But what I think is needed now is an order that addresses what happens in light of those conclusions, I mean, because what we have here are—this all begins with Mr. Dyer's action on behalf of his clients, and obviously, this means that I am denying any request for injunctive relief. And I am ruling favorably on your counterclaim and basically giving you summary judgment on your counterclaim. Now, what that all—what that means further, frankly, in terms of the relief that you're seeking, I'm not sure. Maybe you can tell me now what

that means, from your perspective. I mean, it—I mean, the real effect of this would be a ruling that Mr. Hart has to be licensed, that he has to comply with the ordinance and all of those things. And I assume that's the kind of language that you would want in the order, making clear Mr. Hart's obligation to comply. Are you seeking more than that? Are you trying to look back, and are there claims for fines in here, and things like that? What is your—what are you seeking?

MR. KATSIAFICAS: We're simply—in this Motion for Summary Judgment, seeking to have Mr. Hart conform his conduct to the [42] requirements of the ordinance, to be licensed, to bring acceptable waste to RWS directly, and not to divert his recyclable materials, to not sell them to third parties or whatever. Those are the Town's properties, its solid waste.

COURT: Okay. So you're—

MR. KATSIAFICAS: We're not seeking fines.

COURT: —so you're looking for something prospective, then? I mean, this is what—

MR. KATSIAFICAS: Right.

COURT: —this is what Mr. Hart would now have to do, is that correct?

MR. KATSIAFICAS: That's correct.

COURT: Okay.

MR. KATSIAFICAS: And we are not seeking fines.

COURT: All right. Okay. All right. Well, that's helpful to know—

MR. DYER: Well, I have a question.

COURT: —sure.

MR. DYER: He says he dosen't want recyclables diverted. Where's Mr. Hart supposed to take them?

COURT: Do you want to respond to that, Mr. Katsiaficas?

MR. KATSIAFICAS: I've suggested earlier that those could be taken to the Town's municipal recycling facility at the transfer station, and—

MR. DYER: He's been refused permission to go there. [43] COURT: Well, that's something I guess you'll have to look into, Mr. Katsiaficas.

MR. KATSIAFICAS: —I'll have to look into that, but that would be reflected in the draft order that I prepare.

COURT: Right. Okay.

MR. DYER: Now, I also assume that this is going to apply to every single other waste hauler in the community, because there are other waste haulers who are not doing that. They are not taking their recyclables to the transfer station.

COURT: Well, I'm sure that any policy that's reflected in this order would have to be uniformly applicable. I mean, that—

MR. KATSIAFICAS: That's right. I'm not aware of what other haulers are doing at this time, and any policy that is adopted here would have to be applied across the board in order to be fair.

MR. DYER: Well, we pointed this out to them, that within one hundred feet of the front door to the Town Hall is a waste management recycling bin which is not being taken to the transfer station.

COURT: Hmmm? Okay. Well, that's something that clearly bears examination, Mr. Katsiaficas.

MR. KATSIAFICAS: Certainly, your Honor. That will be examined before I draft the prepared order.

COURT: Okay. Mr. Dyer, from your point of view, is there [44] understanding, sort of where ultimately I'm coming out on this? Is there anything that you feel should be—in terms of dispositive provisions of the order that has to be addressed, just so your client knows where he stands for purposes of appeal land all of that. What—

MR. DYER: Well, I have a couple of questions for appeal, which I like to raise.

COURT: —sure.

MR. DYER: I've restrained myself from continuing the argument this morning, but—

COURT: I understand.

MR. DYER: —obviously, we're going to need some sort of a record to take up on appeal.

COURT: Sure.

MR. DYER: We can either take this transcript this morning, or we could have findings of facts and conclusions of law.

COURT: Well, see, what—that's—I—mean, I'm just not comfortable—I never have been—asking counsel to give me those to—it just doesn't—it just never seems to work for me. And I was hoping to—what I have asked you to do, it seems to me, is—I've tried to give a bench decision which explains where I'm coming from, at least without undue cost. That portion, it seems to me, could be obtained—

MR. DYER: All right. So you would have us rely on the [45] record?

COURT: —right.

MR. DYER: Fine.

COURT: So what I'm really doing is—and obviously, you can have this whole colloquy reproduced if you think that's helpful, but what I'm suggesting to Mr. Katsiaficas is, for the—basically for the reasons stated on the record, and then the transcript would be that, and then these—and I haven't made factual findings, because I have—I mean, you all started out with a proposition which seemed very clear to me that these are really legal issues. There's —now, there seems to be some dispute about how the Town might be applying one provision of the ordinance you've just referred to. But I never saw this as a—where there's much factually in dispute at all, really nothing. I mean, these are legal issues, as you've said right along. So I don't think there's a need to make any factual findings. As least, I've proceeded on that assumption. And so I just tried to give you a summary of my legal conclusions, if you will, and that's now on the record. So I would prefer to just have an order which deals with the respective claims, and indicates how those are disposed of,

make sure they're all disposed of so you have a final judgment, and you can proceed accordingly.

COURT: Now, I also assume—well, I understand that there are no fines that are being assessed at this point in time?

[46] COURT: That's what Mr. Katsiaficas just said. Right.

MR. DYER: All right. Now, obviously, I'm going to ask for the Court to stay the order, pending appeal. There are some appealable issues here, which I—

COURT: Sure. Absolutely.

MR. DYER: —the California reduction case, which I think you were talking about earlier, being those old turn of the century California cases decided by the U.S. Supreme Court—

COURT: Well, I—actually, I was thinking of some Marine cases, at least in terms of monopoly—the monopoly problem. Yeah.

MR. DYER: —there is an old—I think a rendering plant case of some sort in Maine, if I'm not mistaken, which is about the same time as the U.S. Supreme Court cases.

COURT: Yeah. Okay.

MR. DYER: And the question of whether or not this is a regulated industry, I will—I tend to take exception to that.

COURT: Sure.

MR. DYER: And disagree—I understand your position, and I don't mean to be disrespectful here in any way. But—

COURT: That's—that's—I mean, I'm—these are difficult issues, and I think, as I said, it made point—it made sense to me to get this resolved so you can get it decided where it ultimately has to be decided. So—

MR. DYER: —my position would be essentially that recyclables [47] is a new industry. And the recent Supreme Court cases this year indicating that they are commodities, that they are valuable items, and the recent cases

dealing with commerce clause issues all point out the fact that this recyclable industry is very critical. And when you start saying, "Yes, we'll take the broad definition of solid waste," then you start impacting metals processors, newspaper processers, the bottled glass people, all of these industries are going to be impacted one way or another by these kinds of—by this definition. And therefore, we would like to have some relief during the course of this appeal, that I under—I assume that you have no sense of allowing Mr. Hart to continue taking the material to the least costly disposal facility. You are going to require, under any set of circumstances, he take the acceptable waste to RWS. However, we would like to have the opportunity to be able to take the recyclable materials to a third party processor, if, in fact, it proves to be more economical to do that. And it may very well turn out not to be economical because of the volume of recyclable materials being generated. It may be easier just to tip it, rather than to truck it to West Paris in separate trips and so forth. But we would like to have the opportunity to—at least to try and protect that economic situation during the course of the appeal.

COURT: Well, I wonder if we—it's—we've all been at this [48] a long time, and I wonder if maybe we ought to just schedule a separate hearing on the issue of whether a stay should be—whether there should—that—we should —I think maybe that would make—

MR. DYER: And I could phrase it in writing and—

COURT: —yeah.

MR. DYER: —give you a proposed order of specifically what we want?

COURT: Why don't we do that? I'd just as soon—that's obviously also an important issue, and I think I'd rather give separate consideration to that. So why don't we get the—see if, in light of what I've indicated, you and Mr. Katsiaficas can agree on the terms of the order to reflect these rulings, and then after you've done that, I'll make myself available promptly to hear the issue of the stay. I mean, I guess what you'd want to do is—maybe

at the time that you submit the order, you could also submit your—each submit your position on the issue of the stay.

MR. DYER: All right.

COURT: And then I'll—

MR. DYER: And what I will do, Judge, if it's all right with you, I will phrase the request for relief broadly, on the basis that it's better to ask for too much than too —for too little.

COURT: —well, I—

[49] MR. DYER: And you can strike whatever—

COURT: yeah.

MR. DYER: —you deem to be appropriate.

COURT: Okay. And then I won't sign or enter the order until we've had the hearing on the stay, okay?

MR. DYER: All right. Fine.

COURT: And—all right. Why don't we do that? And just so the Clerk can keep track of this, how long do you think you would need to prepare the order and, at the same time, have your respective positions on the stay? A couple of weeks? A week? I don't know.

MR. KATSIAFICAS: I would think that a week would be sufficient, your Honor.

COURT: Okay. All right. Why don't you do that, and then I'll—after I get that, I'll have Amanda, the sec—I'll check with you, we'll set up a time, then, for the hearing on the stay. I think we'll—you'll want to argue that, I assume, is that right?

MR. KATSIAFICAS: Yes, your Honor. We will.

COURT: Okay. Then we'll—

MR. DYER: As a matter of housekeeping, is it all right if we agree to exchange pleadings by close of business on Monday and file on Tuesday, a week from today?

MR. KATSIAFICAS: Well, we'll try to get, actually, a draft order before that, to you.

[50] MR. DYER: Well, all right. So that I have an opportunity to look at them (indiscernible).

MR. KATSIAFICAS: Well, we certainly—we want —we have to agree to an order, I believe.

COURT: I'm asking you to try to—I think—that part, I don't think should be difficult.

MR. KATSIAFICAS: And I'm going to try to—I would think not, your Honor.

COURT: Yes, I'm just asking you to dispose of the —all the claims. I think the stay issue would be the difficult one, so—

MR. KATSIAFICAS: That's right.

COURT: —all right. Thank you.

MR. KATSIAFICAS: Thank you, your Honor.

END OF HEARING

APPENDIX E

TOWN OF GRAY
SOLID WASTE, FLOW CONTROL AND RECYCLING ORDINANCE

AN ORDINANCE OF THE TOWN OF GRAY, CUMBERLAND COUNTY, STATE OF MAINE REGULATING THE COLLECTION, STORAGE, TRANSPORT, DISPOSAL REDUCTION, RECYCLING AND REUSE OF SOLID WASTE IN THE TOWN AND PROVIDING PENALTIES FOR THE VIOLATION OF SAID ORDINANCE.

WHEREAS, the Legislature of the State of Maine has caused certain statutes to be enacted which govern or delegate to the Maine Department of Environmental Protection the responsibility for promulgation of rules and regulations regarding the disposal of solid waste and authorize municipalities to regulate solid waste disposal on municipal property; and

WHEREAS, the Council of the Town of Gray pursuant to the authority vested in it, desires to enact an ordinance regulating the collection, storage, transport, salvaging and disposal of garbage, rubbish, refuse, and other solid waste materials in said Town; and

WHEREAS, the Town of Gray has the authority pursuant to 30-A M.R.S.A. section 3001 et seq., and 38 M.R.S.A. section 1301 et seq. as amended from time to time, to enter into contracts for the collection, transportation, storage, processing, salvaging or disposal of solid waste and to designate certain categories of solid waste as recyclable or reusable material and to require the segregation of waste into categories; and

WHEREAS, reduction, recycling and reusing is a wise and prudent solid waste management technique that saves tipping fees, saves energy, reduces pollution and environ-

mental degradation, keeps usable manufacturing material in the economy and signifies a developing sense of waste awareness; therefore, the Town of Gray wishes to encourage reduction, recycling and reusing to the maximum extent possible; and

WHEREAS, the Gray Landfill will be permanently closed December 31, 1991; and,

WHEREAS, the Council desires to gain management control over solid waste and enable the reclamation of resources, including energy, from those wastes; and

WHEREAS, the Council desires to provide adequate, efficient services and facilities for the disposal of solid waste without creating an undo financial burden on property owners;

THEREFORE, be it enacted and ordained by the Town of Gray, Cumberland County, Maine and it is hereby enacted and ordained by authority of the same as follows:

SECTION I

SCOPE:

This Ordinance applies to all generators of solid waste in the Town of Gray, including but not limited to, residential, commerical, industrial and governmental producers of solid waste in the Town of Gray.

SECTION II

DEFINITIONS:

The following words and terms as used in the Ordinance shall have the meaning ascribed thereto, unless the context indicates a different meaning. Further definitions may be found in Bureau of Solid Waste Management 06-096 CMR 400.1

"*Abandoned Vehicle*"—Any gasoline, diesel or electric powered equipment, or part thereof, originally designed

for carrying persons or goods for commercial, business, private or recreational purposes which is:

1. No longer used for the purpose originally intended,
2. Has not been converted to another commercial, business, private or recreational vehicular use,
3. Is not exempted or regulated by existing State or Federal Laws, or
4. Has been left out in the elements to deteriorate.

It includes, but is not limited to, automobiles, trucks, buses, campers, trailers, boats, snowmobiles, jet skis and ATVs.

"*Acceptable Waste*" shall mean ordinary household, municipal, institutional, commercial and industrial Solid Waste including, but not limited to, the following:

(1) Garbage, trash, rubbish, paper and cardboard, plastics, refuse, beds, mattresses, sofas, refrigerators, washing machines, bicycles, baby carriages and automobile or small vehicle tires, to the extent that Regional Waste Systems, Inc. (RWS) determines that the air emission criteria and standards applicable to and at the RWS Disposal Facility are not violated; and

(2) Processible portions of commercial and industrial Solid Waste; and

(3) Wood and lumber, tree limbs, branches, ties, logs and trees, if no more than four and one-half (4 1/2) feet long and eight (8) inches in diameter, and leaves, twigs, grass and plant cuttings, provided that the Municipality shall not be obligated to deliver or cause to be delivered any items listed in this subpart (3) to the RWS Disposal Facility, and further provided that such items may be delivered to the RWS Disposal Facility by or on behalf of the Municipality on an irregular basis only and shall represent an insignificant portion of the total Waste

delivered to the RWS Disposal Facility by or on behalf of the Municipality within any Calendar Year; and

Notwithstanding any provisions to the contrary, Unacceptable Waste, including Hazardous Waste, shall not be "Acceptable Waste" and is explicitly excluded therefrom. Furthermore, any substances which as of the date of a certain Waste Handling Agreement between the Municipality and Regional Waste Systems, Inc. (RWS) are included as "Acceptable Waste", by which are later determined to be harmful, toxic, dangerous or hazardous by any governmental agency or unit having appropriate jurisdiction, shall not be "Acceptable Waste" under the terms of this Ordinance. However, any substances which as of the date of said Waste Handling Agreement are not included within the definition of "Acceptable Waste" because they are considered harmful, toxic, dangerous or hazardous and which are later determined not to be harmful, toxic, dangerous or hazardous by any governmental agency or unit having appropriate jurisdiction, shall be considered "Acceptable Waste" unless a contrary determination has been or is made by any other governmental agency or unit having appropriate jurisdiction or unless such substances are otherwise considered "Unacceptable Waste" or "Hazardous Waste".

"*Agricultural Waste*" also referred to as "waste resulting from agricultural activities" in 38 MRSA Section 1303. (16), means wastes which result from agricultural activities defined in Section 361-A (1-B), which are returned to the soils as fertilizers. It includes waste pesticides when generated by a farmer, provided that he/she triple rinses each emptied pesticide container in accordance with departmental rules and disposes of the pesticide residues in a manner consistent with the disposal instructions on the pesticide label. It does not include any materials regulated as a residual under Chapter 567 of the Department's Regulations.

"*Ashes*"—the residue remaining after the combustion of a material such as wood, coal, coke or other combustible material.

"*Brown Goods*"—small household appliances including, but not limited to, radios, televisions, sound systems and other small electric or electronic appliances or devices.

"*Commercial Hauler*—Any person, firm, partnership, association, municipality, cooperation, or other legal entity who collects, transports, and disposes of solid waste for a fee as herein prescribed.

"*Commercial Waste*"—solid wastes generated by stores, offices, restaurants, warehouses and other non-manufacturing, non-processing activities; but it does not include residential, household, process, industrial or special wastes.

"*Composting*"—the biological decomposition and stabilization of organic matter under controlled aerobic conditions of high temperature.

"*Construction/Demolition Debris*"—the debris resulting from construction, remodeling, repair and demolition of structures. It includes but is not limited to building materials, asphalt, wall board, pipes, metal conduits, mattresses, household furniture, fish nets, rope, hose, wire and cable, fencing, carpeting and underlay. It excludes asbestos, gypsum board, asphalt shingles, plastics, cans, containers which stored asphalt, paint thinners or other similar materials and material that contains or is combined with residential refuse, rubbish, garbage, hazardous or special wastes, as that term is defined by Chapter 400 of the Maine Department of Environmental Protection's Solid Waste Rules.

"*Demolition Debris*"—see "Constructon/Demolition Debris."

"*Disposal*"—the discharge, deposit, dumping or placing of any solid waste into or on any land or body of water, or the incineration of any solid waste.

"*Disposal Facility*"—any land or structure or combination of land area and land structures, including dumps, recycling centers, and transfer stations used for storing, salvaging, reducing, incinerating or disposing of solid wastes, including any transfer station or similar facility which may be constructed by the Town in connection with the use of any disposal facilities.

"*Garbage*"—all table refuse, animal and vegetable matter, offal from meat, fish and fowls, vegetables and fruits and parts thereof, and other articles and materials ordinarily used for food and which have become unfit for such use or composting for which reasons they are discarded.

"*Hazardous Waste*"—a waste substance or material, in any physical state, designated as hazardous by the Board under 38 M.R.S.A. Section 1303-A et seq. The fact a hazardous waste or a part or a constituent may have value or other use or may be sold or exchanged does not exclude it from this definition.

"*Industrial Waste*"—solid wastes generated by manufacturing or processing activities; but it does not include residential, household, commercial or special wastes.

"*Inert Fill*"—a clean solid material, rocks, bricks, and cured concrete, which are not mixed with other solid or liquid waste, and which are not derived from an ore mining activity.

"*Infectious Waste*"—those wastes so defined by the Solid Waste Management Regulations promulgated by the Department of Environmental Protection pursuant to Title 38 M.R.S.A. section 1304.

"*Land Clearing Debris*"—solid wastes resulting from the clearing of land and consisting solely of brush, stumps, soil material and rocks.

"*Landscape Refuse*"—grass, leaves, shrubs, branches, trees and wood, whether finished or unfinished; but it

does not include construction/demolition debris, land clearing debris, plastic bags or other plastic containers used to collect, store or transport landscape refuse.

"*Person*"—any individual, partnership, association, firm, company, corporation, department, agency, group, including a city, town, county, State, Federal or other governmental unit, or any other entity responsible in any way for an activity subject to these rules.

"*Recyclable Waste*"—waste, which when properly segregated, can be recovered, reused, or recycled. This shall include with limitation, newspapers, corrugated box material, glass and metal containers, scrap metal, waste oil, mixed paper, automotive batteries, white goods, brown goods and other materials deemed recyclable by the Town.

"*Recycling Center*"—a portion of the Transfer Station set aside for the collection, segregation, processing, storage and distribution of recyclable and reusable solid waste.

"*Refuse*"—all combustible refuse and incombustible refuse referred to collectively.

"*RWS or Regional Waste Systems, Inc.*"—shall mean Regional Waste Systems, Inc., a non-capital stock, nonprofit corporation created pursuant to Title 30, Chapter 203 and Title 13, Chapter 81 of the Maine Revised Statutes.

"*Residential Waste*"—solid wastes generated by a residence during normal household activities; but it does not include commercial, process, industrial, landscape, construction/demolition debris or special wastes.

"*Resource Recovery*"—the recovery of materials or substances that still have useful physical or chemical properties after serving a specific purpose and can be reused or recycled for the same or other purposes.

"*Rubbish*"—all miscellaneous waste material, not otherwise included herein, resulting from the ordinary conduct of business or housekeeping.

"*Solid Waste*"—useless, unwanted or discarded solid material with insufficient liquid content to be free flowing, including by way of example, and not by limitation, rubbish, garbage, refuse derived fuel, scrap materials, junk, refuse, inert fill material, and landscape refuse. "Solid Waste" shall in no case include sludges from air or water pollution control facilities, septic tank sludge or agricultural waste. The fact a solid waste, or a part of or constituent of the waste, may have value or other use or may be sold or exchanged does not exclude it from the definition of "Solid Waste".

"*Special Wastes*"—as defined in 38 M.R.S.A. Section 1303 (10-B) means any non-hazardous waste generated by sources other than domestic and typical commercial establishments that exist in such an unusual quantity or in such a chemical or physical state, or any combination thereof, which may disrupt or impair effective waste management or threaten the public health, human safety or the environment and requires special handling, transportation and disposal procedures. Special waste includes, but is not limited to:

a. Oil, coal, wood and multifuel boiler and incinerator ash;

b. Industrial and industrial prices waste;

c. Wastewater treatment plant sludge, paper mill sludge and other sludge waste;

d. Debris and residuals from nonhazardous chemical spills and cleanup of those spills;

e. Contaminated soils and dredge spoils;

f. Asbestos and asbestos-containing waste;

g. Sand blast grit and nonliquid paint waste;

h. Medical and other potentially infectious or pathogenic waste;

i. High and low pH waste;

j. Spent filter media residue;

k. Shredder residue; and

l. Other waste designated by the board, by rule.

"*Town*"—the Town of Gray, Cumberland County, State of Maine.

"*Transfer Station*"—Transfer Station means any waste facility constructed and managed for storage and placement of municipal solid waste in large containers or vehicles for movement to another waste facility.

"*Unacceptable Waste*"—that portion of solid waste which is not acceptable waste and includes, but is not limited to, sewage and its derivatives, special nuclear or by-product materials within the meaning of the Atomic Energy Act of 1954, as amended, and Hazardous Waste, and Special Waste.

"*Waste*"—items, materials or substances delivered to a disposal Facility by the Town, its employees, agents or contractors.

"*White Goods*"—all large appliances, including, but not limited to, stoves, refrigerators, freezers, washing machines, clothes dryers, dishwashers, air conditioners and metal artifacts such as swing sets, bicycles and lawn mowers free of all oil and gasoline. White goods shall not include white goods generated by an owner or operator of a commercial or industrial use or activity.

SECTION III

DISPOSAL FACILITY:

A. To preserve and protect environmental resources, to protect the health, safety, and welfare of the public, to

enhance the quality and character of life in the Town and to improve efforts to recover and reuse valuable resources currently being wasted, it shall be unlawful to dispose of acceptable waste generated within the Town at any location other than the Town Transfer Station, RWS facility at 64 Blueberry Road in Portland, Maine, or other licensed facility designated by the Town Council.

B. The Town shall inform all persons of the location of the Transfer Station by adequate public notice in writing or in print. Furthermore, the Town shall inform all persons authorized to use the Transfer Station of the proper location for disposing of the various components of their solid waste including, but not limited to, recyclable materials, reusable materials, white goods, brown goods, landscape refuse, construction/demolition debris, land clearing debris, tires, ashes, spent motor oil and all other solid wastes.

C. Property Rights

Any solid waste deposited within the boundary of the Town shall become the property of the Town or Regional Waste Systems, Inc., pursuant to the terms of a Waste Handling Agreement entered into between RWS and the Town and amendments thereto. No one shall salvage, remove or carry off any such deposited solid waste without prior approval of the Public Works Director or his designee.

D. From and after the effective date of this ordinance, it shall be unlawful for any person or firm to accumulate, or permanently dispose of within the corporate limits of the Town, abandoned vehicles, garbage, refuse, rubbish, combustible or incombustible refuse, white goods, brown goods, recyclable or reusable material or other solid waste generated within said Town excepting inert fill material, compost and other material for which specific permission has been granted by the Town. Failure to remove any existing accumulation of garbage, refuse, recyclable materials, rubbish, abandoned vehicles or other solid waste

materials within thirty (30) days after the effective date of this ordinance shall be deemed in violation of this section of the ordinance.

E. Nothing in this subsection shall prohibit any person from composting vegetable and plant materials on his/her property for noncommercial use.

F. The owner of any lot, or any other person with the permission of the lot owner and Code Enforcement Officer, may deposit or dump inert substances such as earth, rocks, concrete or similar material for fill purposes only, subject to State and/or local Land Use Regulations.

G. Certain materials may be excluded by Town Council Regulation from those solid waste materials which may be deposited at the Transfer Station. These excluded materials may include white goods, brown goods, tires, ashes, ties, spent motor oil, commercial waste, industrial waste, land clearing debris, landscape refuse, construction/demolition debris, abandoned vehicles and bulky or special waste which may require special processing prior to disposal.

H. Except for licensed disposal of hazardous, special or infectious wastes, it shall be unlawful for any person to burn or incinerate any solid waste within the Town other than wood products, trees, tree limbs, branches, ties, logs, leaves, twigs, grass and plant cuttings, other than in an approved incinerator. Ref: State of Maine Rules and Guidelines for Open Burning, 38 M.R.S.A. Section 599 and Department of Conservation, Bureau of Forestry 12 M.R.S.A. sections 9301 and 9324.

SECTION IV

AUTHORIZED USE OF THE TRANSFER STATION:

A. The availability and use of the portions of the Transfer Station located within the Town shall be limited to the residents of the Town, both permanent and seasonal,

for the sole purpose of disposing of solid waste generated within the Town. As a means of use control, the Town may distribute vehicle permits to authorized users which shall be affixed to use vehicles. Failure to exhibit such permit shall result in denial of use of the facilities.

B. Waste generated at a commercial activity which has been segregated into recyclable, reusable and non-recyclable categories, and is hauled by the generator of the waste, may be deposited at the Transfer Station.

SECTION V

TRANSFER STATION USER CHARGES:

Upon reviewing recommendations made by the Town Manager and Public Works Director, the Town Council may establish by order schedules of waste disposal charges, operating hours, delivery times and other operating regulations for the use of the Transfer Station or any portion thereof located within the Town, which schedules may include different waste disposal charges, operating hours, delivery times and other operating regulations for residents of the Town, businesses located within the Town and commercial refuse collectors collecting solid waste within the Town and may include different schedules for disposal of different kinds of solid waste. All schedules to be on file in the Town Clerk's office.

SECTION VI

RESTRICTIONS:

A. Hazardous Waste cannot be deposited at the Transfer Station. The Town shall not be responsible for any costs or liabilities incurred with the disposal of Hazardous Waste.

B. Special Waste cannot be deposited at the Transfer Station. The Town shall not be responsible for any costs or liabilities incurred with the disposal of Special Waste.

C. Infectious Waste cannot be deposited at the Transfer Station. The Town shall not be responsible for any costs or liabilities incurred with the disposal of Infectious Waste.

D. Agricultural Waste cannot be deposited at the Transfer Station. The Town shall not be responsible for any costs or liabilities incurred with the disposal of Agricultural Waste.

E. Commercial Waste, hauled by the generator of the waste, which has not been segregated into recyclable, reusable and nonrecyclable categories shall be deposited at RWS or other licensed facility designated by the Town Council. The Town shall not be responsible for any costs incurred with the disposal of nonsegregated Commercial Waste hauled by the generator.

F. Construction/Demolition debris can be deposited at the Transfer Station or other location designated by the Town until an alternate Construction/Demolition Debris site is in operation. The Town shall not be responsible for any costs or liabilities incurred with the collection, storage, transport, or disposal of Construction/Demolition Debris.

G. Land Clearing Debris can be deposited at the Transfer Station or other location designated by the Town until an alternate Construction/Demolition site is in operation. The Town shall not be responsible for any costs or liabilities incurred with the collection, storage, transport or disposal or Land Clearing Debris.

H. Landscape Refuse can be deposited at the Transfer Station or other location designated by the Town until an alternate Construction/Demolition Site is in operation. The Town shall not be responsible for any costs or liabilities incurred with the collection, storage, transport or disposal of Landscape Refuse.

I. Owners or operators of a commercial or industrial use or activity cannot deposit white goods or brown

goods at the Transfer Station. The Town shall not be responsible for any costs or liabilities incurred with the collection, storage, transport or disposal of white goods or brown goods from a commercial use or activity.

J. Industrial waste cannot be deposited at the Transfer Station. The Town shall not be responsible for any costs or liabilities incurred with the collection, storage, transport or disposal of industrial waste.

K. It shall be unlawful for any person to place, leave or deposit at the entrance of, or along the perimeter fence of the Transfer Station, any garbage, refuse, recyclable materials, rubbish, white goods or other solid waste materials during, or outside of the hours of the day and the days of the week which the Town Council has determined those facilities open for the disposal of solid waste materials.

SECTION VII

REGULATION OF COMMERCIAL HAULERS:

A. It shall be unlawful for any person to haul, transport, collect, remove and dispose of garbage, refuse, recyclable/reusable materials, rubbish, white goods, brown goods, or other acceptable waste generated within the Town for a fee without first securing a commercial hauler's license. The Town, upon application and after investigation, may issue a commercial hauler's license for a period of one (1) year.

B. The fee for a hauler's license shall be established by Town Council Order. Any person desiring to secure such a license shall present a written application accompanied by the fee, to the Town Clerk; such license shall be issued only after due and proper investigation and recommendation of the Public Works Director and Public Safety Officer and after approval by the Town Council.

C. An application for an annual or a limited commercial hauler's license shall contain the following information:

1. The name of the applicant,
2. The applicant's residence,
3. The address of the applicant's place of business,
4. A description of equipment to be used,
5. A collection route and schedule,
6. Place(s) of deposit of solid waste,
7. A Certificate of Insurance for:
    a. Workers Compensation Insurance covering all employees,
    b. Vehicle Liability for a minimum of $1,000,000.00,
    c. Comprehensive General Liability for a minimum of $1,000,000.00.

D. The Commercial Hauler shall deposit all residential, commercial and industrial acceptable waste generated within the boundaries of the Town at the Regional Waste Systems, Inc. facility or at any other licensed solid waste facility or facilities as may be designated by the Town Council. The Town shall not be responsible for the collection, transport or disposal of any residential, commercial or industrial acceptable or non-acceptable waste.

E. Trucks or other vehicles used for the transportation of garbage or other garbage mixed with refuse shall be of the compactor type, water tight, with an enclosed cargo space. Collection of dry refuse, rubbish, recyclable, and other solid waste materials is permitted in open trucks which shall be covered. No trucks or other vehicles shall be permitted to scatter any of the contents on any of the streets, highways, or roads of the Town. Trucks used to haul garbage refuse, recyclable materials, rubbish, or other soild waste materials over the streets of the Town must be maintained in a clean and sanitary condition and shall meet all the requirements of the Town or appropriate State agency where applicable. The trucks may be inspected at

any time during normal collection hours by the Public Works Director or his designee. Any deficiencies must be corrected within 48 hours by the commercial hauler. Trucks must be cleaned before handling recyclable materials.

F. With prior notice and hearing, licenses and renewals of licenses may be denied and any license issued pursuant to the provisions of this ordinance may be revoked by the Town Council upon failure of the licensee to comply with any of the provisions of this ordinance, or with any of the regulations of the State of Maine, Department of Environmental Protection, relating to the collection and disposal of garbage, refuse, recyclable materials, rubbish, white goods or any other solid waste materials. License fees are non-refundable. An aggrieved party may appeal a license denial or revocation to Superior Court pursuant to Rule 80B within 30 days of such denial or revocation.

G. Any agreement for the collection, transportation and disposal of residential, commercial or industrial solid waste and recyclable materials shall be by private contract between the Person and the Commercial Hauler licensed for the purpose of collecting, removing, hauling and disposal of such garbage, recyclable materials, refuse, rubbish, white goods, brown goods, and other solid waste materials.

H. Any agreements for the removal and collection of recyclable materials must provide that the materials will be received by the Town or its designee in marketable condition.

SECTION VIII

DISPOSAL OF CONSTRUCTION/DEMOLITION DEBRIS, LAND CLEARING DEBRIS AND LANDSCAPE REFUSE

A. Only residents of the Town and owners of property located within the Town may dispose of Construction/ Demolition Debris, Land Clearing Debris and Landscape

Refuse at the Transfer Station or at any other licensed location designated by the Town.

B. Disposal shall occur in accordance with regulations determined from time to time by vote of the Town Council and only in the presence of a Town employee or agent.

C. Contaminated Construction/Demolition Debris, Land Clearing Debris and Landscape Refuse, cannot be deposited at the Transfer Station. The Town shall not be responsible for any costs incurred with the disposal of Contaminated Construction/Demolition Debris, Land Clearing Debris and Landscape Refuse.

SECTION IX

ADMINISTRATION:

A. The Town Council may establish by order the rules and regulations governing the availability and use of the Transfer Station. The operation of the Transfer Station shall conform to all pertinent regulations and directives of all local, county, state or federal agencies which may have jurisdiction.

B. It shall be the duty of the Director of Public Works to enforce the provisions of this ordinance.

SECTION X

PENALTIES FOR VIOLATION:

Any person or firm who shall violate or fail to comply with any of the provisions of this ordinance shall:

A. Be punished by a fine, as established by Town Council Order, per violation plus costs which fine shall be recovered on complaint to the use of the Town. Each day upon which any continuing violation of any provision of this Ordinance shall occur shall constitute a separate violation, and each incident of disposal of Solid Waste in violation of this Ordinance shall constitute a separate vio-

lation. In addition, the Town may seek equitable relief, including but not limited to injunctive relief and indemnification of the Town's liquidated damages to RWS, and attorney's fees and costs to ensure compliance with the terms of this Ordinance.

B. Pay the actual costs to remove and dispose of solid waste.

C. Pay for any damages to the Town's facilities or equipment caused by said violation.

D. Be prohibited from using the Transfer Station, after notice and hearing for a period of six (6) months by the Town Manager upon recommendation of the Director of Public Works or his/her designee. An appeal to this prohibition may be made to the Town Council within fourteen (14) days from the notice upon request. Furthermore, an aggrieved party may appeal to Superior Court pursuant to Rule 80B.

SECTION XI

SEVERABILITY:

If any sentence, clause, or section or part of this ordinance is for any reason found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality, or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, or sections or parts of this ordinance. It is hereby declared as the intent of the Town that this ordinance would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section part thereof, not been included herein.

SECTION XII

AMENDMENTS:

This ordinance may be amended as provided by vote of the Town Council.

SECTION XIII

EFFECTIVE DATE:

This ordinance shall become effective April 3, 1992 and immediately upon becoming effective the Town's current Flow Control Ordinance shall be repealed.

Adopted by the Gray Town Council on March 3, 1992 and amended on June 2, 1992.

A True Copy

Attest: /s/ Paul Bird
PAUL BIRD
Town Clerk

September 28, 1992

APPENDIX F

§ 1304-B. Delivery of solid wastes to specific waste facilities

1. Findings and purpose. The Legislature makes the following findings of fact. Subject to the provisions of chapter 24 [1], the State requires each municipality to provide for disposal services for domestic and commercial solid waste generated within the municipality. Solid waste contains valuable recoverable resources, including energy. Many municipalities have found that energy recovery reduces the cost of solid waste disposal. Energy recovery technology is complex and the equipment requires a steady supply of waste to operate efficiently. Because of the complicated technology, most energy recovery facilities have high capital costs and long payback periods. In order to remain cost effective throughout their lives, these energy recovery facilities require a guaranteed, steady supply of waste. Consequently, municipalities utilizing energy recovery facilities are usually required to enter long-term agreements to provide the facilities with specific amounts of waste. In order to make these energy recovery facilities financially feasible, and thereby simultaneously improve the environmental impacts and the economics of municipal solid waste disposal, municipalities shall have the legal authority to control the handling of solid waste generated within their borders.

The purpose of this section is to promote the recovery of resources from solid waste by creating one of the conditions which make energy recovery economically feasible, assuring municipalities the authority to guarantee a steady supply of solid waste to specific waste facilities.

2. Flow control. Subject to the provisions of chapter 24 [1], municipalities are expressly authorized to enact ordinances that control solid waste collection, its transportation or its delivery to a specific facility, when the purpose and effect of such an ordinance is to gain manage-

ment montrol over solid waste and enable the reclamation of resources, including energy, from these wastes. This authorization includes, but is not limited to, ordinances:

A. Requiring segregation of wastes;

B. Requiring delivery of wastes generated within the municipality, or any portion of those wastes, to a designated disposal or reclamation facility;

C. Designating certain materials as recyclable and exempt from the provisions of paragraph B; and

D. Designating yard wastes as compost material and requiring delivery of these wastes to a designated composting facility.

3. Repealed. Laws 1989, c. 585, § 14.

4. Contracts. In order to encourage and facilitate the financing and development of solid waste facilities, including, but not limited to, facilities for resource recovery, municipalities shall have the following powers, notwithstanding any law, charter, ordinance provision or limitation to the contrary:

A. To contract with a corporation described in subsection 5 or a refuse disposal district organized under chapter 17 [1] or any person, including, but not limited to, the owner or operator of any waste facility, for the collection, transportation, storage, processing, salvaging or disposal of waste. Any such contract may be for such term of years and may contain such other provisions as the municipality may approve. Any such contract may provide that, in consideration for the obligation of the facility owner or operator to handle all or any portion of the solid waste generated in the municipality, the municipality shall pay to the facility owner or operator such fees, assessments and other payments as shall be established in accordance with the contract.

B. Without limiting the generality of the powers conferred in paragraph A, to agree in such a contract to pay fees, assessments or other payments in such amounts as may be reasonably necessary to pay:

(1) Costs associated with financing, developing, constructing, repairing, maintaining and operating all or any one or more of the waste facilities owned or operated by the facility owner or operator, including, but not limited to, the payment of debt service and the maintenance of reasonable reserves or sinking funds in connection with the financing or operation of any such waste facilities;

(2) Any other costs incurred by the facility owner or operator in connection with the handling of solid waste, whether performed at any waste facility referred to in subparagraph (1) or at another such facility differently owned and operated; and

(3) Any deficiencies arising by virtue of the failure of any other municipality so agreeing to meet its obligations to pay the costs set forth in subparagraphs (1) and (2) in accordance with any similar agreement with the same facility owner; and

C. To pledge the full faith and credit of the municipality for the payment of fees, assessments and other payments, as provided in paragraphs A and B, and to levy upon and raise from taxable estates within the municipality by general taxes the amounts required to pay these fees, assessments and payments or to raise those amounts by means of any fee, user charge or other cost-sharing or assessment mechanism duly adopted and authorized by the municipality or to borrow those amounts by issuance of general obligation bonds or notes.

Any contract complying with the requirements of this subsection and subsection 6 shall be a properly authorized, legal, valid, binding and enforceable obligation of the municipality, regardless of whether the agreement was authorized, executed or delivered prior to or after the effective date of this subsection.

4-A. Contract limitations. Any contract, including any contract in existence on the effective date of this subsection, for the provision of waste disposal, transportation or handling services to municipalities is subject to the following limitations.

A. No contract for waste disposal, transportation or handling services may prevent a municipality from recyling any portion of its solid waste, provided that any minimum BTU content level and minimum tonnage level required by that contract is maintained by the municipality.

B. No contract for waste disposal, transportation or handling services may prevent a municipality from meeting its obligations to supply a minimum BTU content level and minimum tonnage level required by that contract using solid waste generated outside its borders, provided that:

(1) The municipality is or will be unable, as the direct result of recycling or source reduction efforts, to meet the obligations using solid waste generated within its jurisdiction; and

(2) The municipality is liable for any damages caused by any solid waste it relies upon to satisfy the provisions of its contract.

C. For those waste disposal, transportation or handling services contracts which do not principally rely upon requiring minimum BTU content level or minimum tonnage level to secure solid waste for the waste disposal facility, but which instead rely upon

a requirement that the municipality provide all or most of its solid waste to the waste disposal facility, no such contract may prohibit a municipality during the term of the contract from recycling those materials which the municipality determines to be recyclable.

D. A municipality which anticipates that it will be unable to meet its contract obligation to supply a minimum BTU content level or minimum tonnage due to waste reduction or recycling programs and is unable to reach an agreement with the incinerator for the anticipated reduction may request the agency to intercede. The agency shall assist the incinerator in soliciting solid waste to mitigate any anticipated shortfall in minimum BTU content level or minimum tonnage. If no agreement on mitigation of an anticipated shortfall is reached, the terms of the original contract shall prevail, except as otherwise provided in this chapter.

5. *Public waste disposal corporations.* Notwithstanding any law, charter, ordinance provision or limitation to the contrary, pursuant to any interlocal agreement entered into in accordance with Title 30-A, chapter 115,[2] any 2 or more municipalities may organize or cause to be organized or may participate in one or more corporations organized as nonprofit corporations under Title 13, chapter 81,[3] or Title 13-B for the purpose, among other permissible purposes, of owning or operating any one or more waste facilities described in subsection 4, paragraph A, and a subscribing municipality may agree in any such interlocal agreement to pay fees, assessments or other payments as described in subsection 4, paragraph B, for such term of years and on such other terms as the interlocal agreement may provide and may pledge the full faith and credit of the municipality to the same extent provided in subsection 4, paragraph C. The applicable interlocal agreement or the articles of incorporation or bylaws of the corporation must provide that:

A. The corporation shall be organized and continuously thereafter operated as a nonprofit corporation, no part of the net earnings of which may inure to the benefit of any member, director, officer or other private person;

B. The directors of the corporation shall be elected by the municipal officers of the municipalities participating in the corporation; and

C. Upon dissolution or liquidation of the corporation, title to all of its property shall vest in one or more of the municipalities participating in the corporation.

Any interlocal agreement complying with the requirements of this subsection and subsection 6 must be a properly authorized, legal, valid, binding and enforceable obligation of the municipality, regardless of whether the agreement was authorized, executed or delivered prior to or after the effective date of this subsection. Any corporation organized in a manner that satisfies the requirements set forth in this subsection and subsection 6, whether organized prior to or after the effective date of this subsection, shall be deemed for all purposes as organized pursuant to this subsection. If so provided in the applicable interlocal agreement, any such corporation shall have the power, in addition to any other powers that may be delegated under Title 30-A, chapter 115, to issue, on behalf of one or more of the municipalities participating in the corporation, in order to finance the facilities, revenue obligation securities issued in accordance with Title 10, chapter 110, subchapter IV,[4] and any other bonds, notes or debt obligations which municipalities are authorized to issue by applicable law. For these purposes, the term "municipal officers" as used in Title 10, chapter 110, subchapter IV, means the board of directors of any corporation described in this subsection. Title 10, section 1064, subsection 6, may not be construed to prohibit the assignment or pledge as collateral security of any

contract of a municipality authorized by this section or of any or all of the payments under this section, regardless of whether the provisions of subsection 4, paragraph C, are applicable to the contract or payments. The provisions of Title 10, sections 1063 and 1064, subsection 1, paragraph A and paragraph C, subparagraph (4) do not apply to revenue obligation securities issued by any public waste disposal corporation described in this subsection.

6. Relationship to other laws. The obligation of a municipality to pay any fees, assessments or other payments in accordance with any agreement entered into pursuant to subsection 4 or any interlocal agreement referred to in subsection 5 shall not constitute a "debt" or "indebtedness" of the municipality within the meaning of any statutory, charter or ordinance provision limiting the incurrence or the amount of municipal indebtedness nor shall the authorization or incurrence of the obligation or any municipal action to raise funds to meet the obligation by any means set forth in subsection 4, paragraph C, require or be subject to any voter referendum or approval under any law or any charter or ordinance provision.

A. A municipality may agree to make payments in accordance with subsection 4, paragraph B, or in accordance with the provisions of any interlocal agreement referred to in subsection 5 with regard to all or any portion of debt incurred or to be incurred for the financing of one or more waste facilities, provided that no such payments shall be made with respect to debt or any portion of debt which, when incurred, would cause the total principal balance of all then outstanding debt or portions of debt to which the payments apply to exceed:

(1) Three percent of the last full state valuation of the municipality; minus

(2) The municipality's then obtaining allocable share of any debt or portions of debt described

in paragraph B with regard to which it is obliged to make payments.

B. Notwithstanding paragraph A, 2 or more municipalities may agree to make payments in accordance with subsection 4, paragraph B, or in accordance with any interlocal agreement referred to in subsection 5 with regard to all or any portion of debt incurred or to be incurred for the financing of one or more waste facilities, provided that no such payments may be made with respect to debt or any portions of debts which, when incurred, would cause the total principal balance of all then outstanding debt or portions of debt to which the payments apply to exceed:

(1) Three percent of the sum of the last full state valuation of all municipalities so agreeing; minus

(2) Any amounts of debt or portions of debt described in paragraph A in connection with which any such municipality is obliged to make payments.

The limitations set forth in paragraphs A and B shall only apply to agreements by which a municipality or group of municipalities have agreed to make payments directly based, among other things, on a facility owner's costs of debt service and other costs of financing and shall not be construed to apply to contract payments calculated on any other basis, even if the facility owner uses the payments to meet its debt service obligations.

The obligation of the municipality to pay fees, assessments and other payments in accordance with subsection 4 or any interlocal agreement referred to in subsection 5 shall be binding upon and enforceable against the municipality without regard to whether all or any one or more of the waste facilities referred to in subsection 4, paragraph B, subparagraph (1), becomes operational or was

or will be in operation during the period for which the fees, assessments or other payments are so charged.

No contract entered into in accordance with subsection 4 nor any ordinance adopted under the authority of subsection 2 may be deemed a contract in restraint of trade or otherwise unlawful under Title 10, chapter 201.[5]

Notwithstanding any law, charter or ordinance provisions to the contrary, the powers conferred upon a municipality pursuant to subsections 4 and 5 and this subsection may be exercised by the municipal officers as defined in Title 30-A, section 2001, including the assessors of a plantation, only when authorized, in the case of a municipality with a city or town council, by action of the council and, in the case of a municipality without such a council, by action of the town meeting. This paragraph shall apply whether or not the action of the city council, town council or town meeting was taken before or after March 21, 1986.

Nothing in this section may be construed to be a limitation on the Home Rule powers granted to municipalities under Title 30-A, section 3001, or on the ability of communities to jointly exercise their powers as is recognized in Title 30-A, section 2201. This section provides an additional and alternative method for carrying out this subchapter.

7. Subjugation. Notwithstanding any provision of this section to the contrary, the exercise of any power or authority granted under this section is subject to the provisions of chapter 24.[1]

APPENDIX G

ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document No. 1903

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED SEVENTY-THREE

AN ACT Relating to Solid Waste Disposal

Be it enacted by the People of the State of Maine, as follows:

R. S., T. 38, c. 13, additional. Title 38 of the Revised Statutes is amended by adding a new chapter 13, to read as follows:

CHAPTER 13
SOLID WASTE MANAGEMENT

§ 1301. Short title

This chapter shall be known and may be cited as the "Maine Solid Waste Management Act."

§ 1302. Declaration of policy

The Legislature declares it to be the policy of the State of Maine consistent with its responsibility to protect the health, safety and welfare of its citizens, enhance and maintain the quality of the environment, conserve natural resources and prevent water and air pollution, that it shall encourage solid waste programs, public or private, which will reduce the volume of solid waste production, improve efforts to reuse and recover valuable resources currently being wasted and which will not adversely affect the public health, safety and welfare of the citizens nor degrade the environment.

The Legislature also finds and declares that economic, efficient and environmentally sound method of waste disposal is of the highest priority. Municipalities are generating increasing amounts of solid waste with no systematic or consistent methods being used to reduce the volume of waste or to soundly dispose of it. Failure to plan properly for future solid waste may further deplete already taxed natural resources and aggravate environmental and public health problems resulting from present inadequate practices of resource recovery and solid waste disposal.

§ 1303. Definitions

The following words when used in this chapter shall have the following meanings unless the context in which they are used clearly shows a different meaning:

1. Board. "Board" means the Board of Environmental Protection.

2. Commissioner. "Commissioner" means the Commissioner of the Department of Environmental Protection.

4. Municipality. "Municipality" means a city or town.

5. Person. "Person" means an individual, firm, corporation, partnership, association, municipality, quasi-municipal corporation, state agency or any other legal entity.

6. Recoverable resources. "Recoverable resources" means materials that still have useful physical or chemical properties after serving a specific purpose and can be reused or recycled for the same or other purposes.

7. Solid waste. "Solid waste" means useless, unwanted or discarded solid material with insufficient liquid content to be free flowing, including by way of example, and not by limitation, rubbish, garbage, scrap materials,

junk, refuse, inert fill material and landscape refuse, but shall not include septic tank sludge or agricultural wastes.

8. Solid waste disposal facility. "Solid waste disposal facility" means any land area or structure or combination of land area and structures, including dumps, used for storing, salvaging, processing, reducing, incinerating or disposing of solid wastes.

9. Solid waste management. "Solid waste management" means purposeful, systematic and unified control of the collection, storage, transportation, processing, salvaging and disposal of solid waste.

§ 1304. Department; powers and duties

1. Rules and regulations. The board may adopt, amend and enforce such rules and regulations as it deems necessary governing solid waste management, including the location, establishment, construction and alteration of solid waste facilities. Such regulations shall be designed to encourage logical utilization of recoverable resources, to minimize pollution of the state's air, land and water resources, prevent the spread of disease or other health hazards, prevent contamination of drinking water supplies and protect public health and safety. In adopting such regulations, the board shall also consider economic impact, technical feasibility and such differences between municipalities as are created by population, waste volume and geographic location. Regulations shall be promulgated in the manner provided by section 361. The municipal officers of all municipalities shall be notified, in writing, at least 30 days prior to any hearing. Regulations adopted pursuant to this section shall not become effective until July 1, 1975, thereby affording ample opportunity for the Legislature to modify, expand or reject such regulations as deemed appropriate.

No regulation adopted pursuant to this section shall exceed air quality standards authorized by Title 38, chapter 4.

2. Site location. The board may provide by regulation that no person may locate, establish, construct, alter or operate any solid waste disposal facility unless approved by the board under sections 481 to 488.

3. Municipal status reports. The department shall review reports submitted by municipalities as required by section 1305. Report forms shall be prepared and distributed by the department. Required information shall include, but not be limited to, the following:

A. Location of solid waste disposal facility sites within the municipality whether publicly or privately owned or operated, their mode of operation and anticipated useful life;

B. Ordinances or regulations adopted by or proposed for the municipality which regulate the use of waste disposal facilities within the municipality;

C. All legal arrangements established by municipalities for providing a solid waste disposal facility for solid waste generated within the municipality;

D. Any plan for solid waste management officially adopted by the municipality.

4. Technical assistance. The department is authorized to establish guidelines for effective solid waste management, to provide technical assistance to persons planning, constructing or operating solid waste disposal facilities, and to conduct applied research activities in the field of solid waste management, including methods of recycling solid waste items.

5. Planning grants. The department is authorized to receive funds, public and private, to use such funds for the administration of this chapter and to make grants from such funds to municipalities and regional planning agencies or their agents as designated by the municipality, for the purpose of planning and implementing solid waste management activities and solid waste disposal facilities pursuant to guidelines established by the board.

§ 1305. Municipalities; powers and duties

1. Disposal facilities. Each municipality shall provide a solid waste disposal facility for domestic and commercial solid waste generated within the municipality and may provide such a facility for industrial wastes and sewage treatment plant sludge.

2. Ordinances. This chapter shall not be construed as limiting the authority of any municipality to enact ordinances for the regulation of solid waste disposal, provided that such ordinances are not less stringent than or inconsistent with the provisions of this chapter or the regulations adopted thereunder.

3. Contracts. Municipalities may contract with any person for the collection, transportation, storage, processing, salvaging or disposal of solid wastes.

4. Municipal status reports. The municipal officers of each municipality shall, on or before the first day of November, 1973, and on or before the first day of June each year thereafter, submit on forms prepared by the department, information relating to solid waste management within the municipality.

5. Municipal permits. All permits issued pursuant to Title 30, sections 2451 to 2460 shall, in addition to requirements imposed by those sections, be conditioned on compliance with rules and regulations adopted by the board concerning the operation of solid waste disposal facilities. Copies of permits issued by the municipality shall be submitted to the department within 30 days of issue.

§ 1306. Prohibited acts

It shall be unlawful for any person to establish, construct, alter or operate any waste disposal facility or to store, collect, transport, process or dispose of solid waste contrary to regulations promulgated by the department.

§ 1307. Violations

Any person violating any provision of this chapter or the rules or regulations promulgated thereunder shall be punished by a fine of not more than $500 for each day a violation exists. The Superior Court shall have jurisdiction to enjoin any violation of this chapter or the rules or regulations promulgated thereunder.

§ 1308. Exemptions

Rules and regulations adopted pursuant to this chapter concerning the location, establishment and construction of solid waste disposal facilities, but not concerning alteration or operation, shall not affect such facilities in existence prior to the effective date of this Act.

STATEMENT OF FACT

The purpose of this Act is to designate the Department of Environmental Protection as the State agency responsible for developing guidelines and regulations relating to the collection, storage, processing, salvaging and disposal of solid wastes. The Department would be empowered to enact uniform regulations designed to prevent environmental harm and public health hazards, however, such regulations will not become effective until July 1, 1975, thereby affording the 107th Legislature to modify, expand or reject such regulations as deemed appropriate. This Act also requires municipalities to assume responsibility for the orderly disposal of solid waste except that generated by industry and waste water treatment plant sludge.

STATE OF MAINE
SENATE
106TH LEGISLATURE

SENATE AMENDMENT "A" to H.P. 1478, L.D. 1903, Bill, "AN ACT Relating to Solid Waste Disposal."

Amend said Bill in that part designated "*§ 1308.*" by adding at the end of new sentence to read as follows:

'Landscape refuse and fill disposal sites established in connection with public works projects and commonly known as "stump dumps" are exempt from this chapter.'

Statement of Fact

The purpose of this amendment is to exempt "stump dumps" from the bill.

Name: /s/ [Illegible]
(Schulten)

County: Sagadahoc.

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